



ARNOLD & BAILEY

ATTORNEYS AT LAW

S. Andrew Arnold, Esq. PARTNER
Gregory A. Bailey, Esq. PARTNER
J. Daniel Kirkland, Esq. ATTORNEY
Christopher P. Stroeck, Esq. ATTORNEY

208 N. George Street
Charles Town, WV 25414

T: 304 725 2002
F: 304 725 0282

December 4, 2020
By Hand Delivery

Jackie Shultz, Clerk
West Virginia Environmental Quality Board
601 57th Street, SE
Charleston WV 25304

Re: Jefferson County Foundation, Inc. v. WVDEP

Dear Ms. Shultz:

Please find enclosed an original and two (2) copies of a NOTICE OF APPEAL for filing in the above-captioned matter.

Thank you for your time and attention to this matter.

Very truly yours,

Christopher P. Stroeck, Esq.

CPS:djh
Enclosures

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC.,
CHRISTINE L. WIMER, KAREN MICHELLE FREER,
and GAVIN PERRY,**

Appellants,

v.

Appeal No. _____

**KATHY EMERY, ACTION DIRECTOR,
DIVISION OF WATER & WASTE MANAGEMENT,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

Appellee.

NOTICE OF APPEAL

Action Complained Of: The Appellants, Jefferson County Foundation, Inc., Dr. Christine L. Wimer, Ms. Karen Michelle Freer and Mr. Gavin Perry, by and through counsel, Christopher P. Stroeck, Esq. and the law firm of Arnold and Bailey, PLLC respectfully represent that they have been aggrieved by the issuance of General Permit Registration No. WVG611896 to Roxul USA, Inc. ("Rockwool"), allowing it to operate under General Permit No. WV0111457 to discharge stormwater associated with industrial activities, by the West Virginia Department of Environmental Protection ("DEP"), acting through its Division of Water & Waste Management, on November 5, 2020. (See, Notice of Registration attached hereto as Exhibit B, which should be read to include all supporting documentation referenced in the Notice.)

Appellants assert that the Registration was issued by the DEP in violation of certain applicable state statutes, rules and regulations it is required to follow in implementing the federal National Pollutant Discharge Elimination System ("NPDES") standards. In doing so it acted

arbitrarily and capriciously, and exceeded its authority by intentionally disregarding the environmental laws of the state. As a result of these arbitrary and capricious actions of the DEP, a MSGP Registration was issued to Rockwool, without it meeting the states' legally binding requirements. The decision denied the Appellants and other citizens of Jefferson County their rights under the NPDES program to be aware of, object to, and challenge Rockwool's compliance with the terms and conditions of the permit. These actions have denied the Appellants the ability to protect the health and integrity of its water sources – upon which the health and welfare of the community relies.

Specifically, the issuance of the Registration without requiring Rockwool to comply with certain statutory and regulatory requirements, passed by the State legislature, poses substantive risks to the groundwater of Jefferson County. These risks become imminent when Rockwool begins operation of its facility. The actual date of beginning operations is not currently known to the Appellants; although Rockwool has made public statements that it will begin operations in the second quarter of 2021.

Relief Requested: The Appellants, therefore pray, this this matter be reviewed by the Board at a hearing at which Appellants will present evidence in support of the Specific Objections to the Permit; and, that following the hearing, the Board grant the following relief:

The DEP should be ordered to withdraw the current Rockwool Registration in its entirety, and require Rockwool to reapply for an individual permit, in which all of the errors, omissions, inaccurate and incomplete information is provided to the DEP for full evaluation in compliance with the requirements of the statutes, regulations and requirements. This process would include another period of public comment and review.

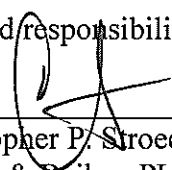
In the alternative, Appellants request the DEP be mandated to withdraw the current Registration, and require Rockwool to submit a new application for Registration providing true, accurate and complete information on each of the Specific Objection that the EQB determines was inappropriately accepted by the DEP. This process would include another period of public comment and review.

Specific Objections: The Specific Objections to the DEP's action, including questions of fact and law to be determined by the Board, are set forth in detail in separate numbered paragraphs and attached hereto as Exhibit A.

Request for a Stay: Appellants' assert that it will suffer irreparable harm if Rockwool begins operations under the current inadequate Permit; however, that harm is triggered by Rockwool beginning operations, which has not happened. In the event that Rockwool's operations are set to begin before this matter can be fully addressed by the Board, the Appellants provide this notice of intent to seek a stay to prevent operations from beginning until all permit challenges are resolved.

Conclusions:

For the reasons stated herein, Appellants file this Appeal of the Registration under the MSGP given by the DEP to the Rockwool corporation, because this action was arbitrary, capricious, and beyond the scope of its statutory authorities, and based on its failure to carry out required responsibilities with respect to issuing permits.



Christopher P. Stroeck, Esq. (WVSB #9387)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414
304-725-2002
304-725-0283 (Fax)
cstroech@amoldandbailey.com

I. The Parties

1. Plaintiff Jefferson County Foundation, Inc. ("JCF") is a West Virginia 501(c)(3) Non-Profit Corporation, formed for the purpose of preserving and protecting the quality of life for all Jefferson County, West Virginia residents. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438.
2. JCF educates and advocates for effective and accountable government, sustainable development, and the protection of health, heritage, and the environment. It has a current priority focus of ensuring the accountability of all government entities that are involved in and responsible for the location, construction, permitting, and operation of the proposed Rockwool industrial facility in Jefferson County.
3. JCF has a Board of Directors consisting of three (3) members, who all own real property in Jefferson County, West Virginia. This Appeal is being brought by the Directors, on behalf of the organization, in both their individual capacities as property owners and organizational capacities as Directors.
4. Dr. Christine L. Wimer owns real property in Jefferson County, West Virginia, where her property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool. Dr. Wimer's property is less than four (4) miles from the Rockwool site. Dr. Wimer and JCF submitted comments in response to the issuance of the Permit.
5. Ms. Karen Michelle Freer owns real property in Jefferson County, West Virginia, where her property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool. Ms. Freer's property is less than one (1) mile from the Rockwool site. Ms. Freer submitted comments in response to the issuance of the Permit.



6. Mr. Gavin Perry owns real property in Jefferson County, West Virginia, where his property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool. Mr. Perry's property is less than one (1) mile from the Rockwool site. Mr. Perry submitted comments in response to the issuance of the Permit.

7. The West Virginia Department of Environmental Protection ("DEP") is a government agency of the State of West Virginia. The challenged permit was issued by the DEP's Division of Water & Waste Management, by Kathy Emery, P.E., Acting Director, and has a primary address of 601 57th Street SE, Charlestown, West Virginia, 25304.

II. Facts and Procedural history

8. On March 3, 2014 The West Virginia/National Pollutant Discharge Elimination System Multi-Sector General Water Pollution Control Permit (NPDES MSGP) (WV0111457) was issued, it became effective on April 2, 2014.
9. On February 7, 2019 the 2014 NPDES MSGP (WV0111457) was administratively extended by the DEP until August 31, 2019.
10. On July 22, 2019 Rockwool submitted its application (WVG611896) for a new registration under the Multi-Sector General Permit (WV0111457).
11. On July 24, 2019 Rockwool's application (WVG611896) was deemed administratively complete by the DEP.
12. On August 14, 2019 the 2014 NPDES MSGP (WV0111457) was again extended by the DEP until December 31, 2019.
13. On September 12, 2019 the NPDES MSGP (WV0111457) was reissued.
14. On September 18, 2019 Rockwool's draft permit registration was approved by the DEP; and the DEP issued the Public Notice letter regarding the issuance of the draft permit.
15. On October 11, 2019 the NPDES MSGP was appealed to the EQB by the Builders Supply Association of WV.
16. On October 12, 2019 the NPDES MSGP (WV0111457) that was issued on September 12, 2019 became effective, replacing the 2014 permit.
17. On October 23, 2019 a public hearing about the draft Rockwool's draft registration was held in Shepherdstown.
18. On November 2, 2019 the extended public comment period ended. The Appellants all submitted public comments.

19. On January 26, 2020 Jefferson County Foundation submitted a petition to the Secretary requesting that Rockwool be required to obtain an individual NPDES permit, as opposed to a Registration under the general NPDES permit.
20. On January 30, 2020 the EQB issued an Order approving a proposed order resolving the appeal of the NPDES MSGP accepting the settlement between the DEP and the Builder's Supply Association of WV.
21. On September 18, 2020 the revised draft NPDES MSGP was released to the public for public comment. On October 23, 2020 the public comment period closed for the revised draft NPDES MSGP.
22. On November 05, 2020 Rockwool's MSGP registration (WVG611896) was approved.

III. Specific Objections

23. Appellants assert that the DEP acted in an arbitrary and capricious manner, and/or exceeded its statutory authority, when it approved and issued a Registration under the Multi-Sector General Permit (MSGP) to Rockwool, effectively allowing it to commence operations, without requiring Rockwool to provide true, accurate and complete information to the DEP. The laws require the DEP to make a determination on Rockwool's compliance with various statutory or permit conditions and requirements, and do not give the DEP the authority to ignore relevant statutory requirements. The specific objections identified below detail the facts and instances in which the DEP's actions exceeded its authority and/or did not fulfill its duties and responsibilities to protect the ground waters of Jefferson County from the risks of operations by the Rockwool facility.

Failure in the Stormwater Pollution Prevention Plan

24. The DEP failed to require Rockwool to provide a compliant Stormwater Pollution Prevention Plan (SWPPP). The plan, as accepted by the DEP, does not meet the statutory or permit requirements. As accepted by the DEP the information provided in the SWPPP is insufficient to provide enough information for a competent evaluation of the design, implementation, and suitability of the stormwater handling system at the Rockwool site. evaluating the pollution potential of runoff from various portions of the industrial plant.

The DEP failed to properly evaluate the Stormwater Pollution Prevention Plan (SWPPP) by not evaluating the pollution potential of runoff from various portions of the industrial plant.

25. The DEP approved Rockwool's registration without completing a risk identification and assessment, and a material inventory. Rockwool failed to include all applicable potential pollution sources in the inventory when evaluating the pollution potential of runoff from various portions of the industrial plant. Rockwool failed to provide true accurate and complete information about the pollution potential of the potential sources it did inventory. Rockwool completely neglected to identify and discuss the toxicity of chemicals; quantity of chemicals used, produced, or discharged; and nature and uses of the receiving waters, when evaluating the pollution potential of runoff from various portions of the industrial plant. Despite these critical omissions, the DEP approved Rockwool's registration.

26. The DEP failed to require Rockwool to identify and consider in its SWPPP, the various outdoor manufacturing or processing activities, dust or particulate generating processes when evaluating the pollution potential of runoff from various portions of the industrial plant. Rockwool failed to provide true, accurate, and complete information about the outdoor manufacturing or processing activities, dust or particulate generating processes in its SWPPP. Information contained in Rockwool's air permits demonstrate that it has uncontrolled outdoor manufacturing processes that produce dust and particulate matter. Also, Rockwool's air emissions modeling suggests that a significant amount of particulate matter of its air emissions will fall to the ground on the Rockwool property. The particulate matter from these sources and the pollutants they carry will pollute the stormwater. The DEP failed to require that Rockwool describe and consider these sources in the evaluation of pollution potential of runoff from various portions of the industrial plant. These sources should be discussed and evaluated in the SWPPP as required in the permit. Notwithstanding these failures of

Rockwool to identify the manufacturing or processing activities, and mitigation of the outdoor manufacturing/processing facilities, the DEP approved and issued the registration.

27. The DEP approved the Rockwool registration permit, despite Rockwool's failure to identify and consider, as required, all of the waste disposal processes when evaluating the pollution potential of runoff from various portions of the industrial plant. Rockwool failed to provide true, accurate, and complete information when evaluating the pollution potential of runoff from various portions of its property. Most notably, Rockwool failed to include, as required, a discussion and consideration of the waste stored and processed at the Melt for Reuse Area and the material that settles in the forebay of the rainwater for reuse and stormwater ponds. The DEP failed to require that Rockwool describe and consider these sources in the evaluation of pollution potential of runoff from various portions of the industrial plant. According to permit conditions, these sources should be discussed and evaluated in the SWPPP as required in the permit. This is despite the statutory requirement that "New areas used for storage or disposal of raw materials, products or wastes shall be designed, constructed and operated to prevent release of contaminants to the groundwater, using liner systems if necessary."¹ Notwithstanding these failures, the DEP approved the Registration.

28. The DEP approved the Rockwool registration, even though Rockwool failed, as required, to provide true, accurate and complete information, and demonstrate consideration of the toxicity of chemicals; quantity of chemicals used, produced, or discharge; and nature and uses of the receiving waters in the narrative when evaluating the pollution potential of runoff from various portions of the industrial plant. The DEP failed to require Rockwool to

¹ 47-CSR-58-4(3)(2)

correct these errors and omissions in this section of the SWPPP. These are critical elements necessary for risk identification and assessment and complete understanding of the potential for this operation and its stormwater handling to pollute ground, surface, and drinking water. Notwithstanding the statutory requirements of the DEP to consider these issues to protect the water resources, the DEP issued the Rockwool registration.

The DEP failed to properly evaluate the SWPPP by not requiring a complete and accurate Site Sketch as part of the permit.

29. The DEP failed to require Rockwool to identify all of the storage areas and waste areas on the site sketch. This is a requirement of the regulations and permit, which sets out specific requirements of what is to be included in the site sketch. Rockwool failed to provide true accurate and complete information about storage areas and waste areas on the site sketch. Examples include, the Melt for Reuse Area (B170) and the recycled material stockpile both identified as “outdoor material storage areas”² in Rockwool’s construction air permit application materials; however, they are not identified in the Multi-Sector permit application as a storage area. (This area stores waste or “melt” from the furnace that is periodically crushed with other materials in this location and stored here for reuse.) The storage of process waste water is not identified in the MSGP permit. These are significant omissions, because without identification of all areas used as storage and waste areas the effect of site operation on stormwater cannot have been actually determined by the DEP, which is a statutory requirement.

30. The DEP failed to require Rockwool to identify the stormwater outlets on the site sketch as required by statutory and/or permit conditions. Rockwool failed to provide true,

² Roxul USA, Inc., Permit R14-0037 page 27

accurate, and complete information on the site sketch about stormwater outlets. For example, Outlet 001 is not only not marked, but is not displayed on any version of the site sketch submitted to the DEP as part of the MSGP registration application. Rockwool's site sketch shows three drainage areas and two outlets. Recent depictions of the final drainage pattern in submission for other permits show a fourth drainage area and a third outlet that Rockwool labels Outlet 003 in that document. However, this fourth drainage area and third outlet are not shown on any version of the site sketch in the MSGP registration application. The DEP failed to require Rockwool to correct these errors, and without correction, evaluation of the stormwater handling system cannot have been done. The DEP failed to require the inclusion of Outlet 003 on the site sketch map, allowing Rockwool to begin operation with an unpermitted and unevaluated Outlet.

31. The DEP failed to require Rockwool to identify how the water from the rainwater for reuse pond and the pollutants it contains will be disposed of. Rockwool has publicly stated that it is only disposing to the municipal sewer system water from its internal reverse osmosis and water softener systems. Rockwool has repeatedly claimed that no water will be discharged from the rainwater for reuse pond and the normal operating level of the Rainwater Reuse Pond will be approximately 2.5 ft. "Normal fluctuations in pond level are expected to be plus or minus 2.5 feet. Reuse of collected rainwater is preferable to purchase of potable water so will typically be used as it is collected".³ Additionally, the DEP failed to require Rockwool to provide truthful, accurate and complete information to evaluate its plan for dewatering the Rainwater for Reuse pond. Thus, the DEP does not know, and has not considered, sufficient information to evaluate the adequacy of Rockwool's overtopping the pond. The DEP requested

³ Rockwool SWPPP page 18, General Operating Principles, paragraph 2

this information, including the facts about how Rockwool was going to dewater the pond, who would be retained to do that work and under what conditions. Notwithstanding the DEP request and the permit requirements for this information, the DEP issued the registration without receiving any of that information in the permit.

32. The DEP failed to require Rockwool to submit an accurate site sketch, as required by the conditions of the permit. Rockwool failed to provide true, accurate, and complete information in the site sketch. The site sketch is missing several other significant elements. As a result, the site sketch does not adequately depict the risks for stormwater pollution. It also does not accurately display the stormwater controls such that neither can be evaluated appropriately. Examples of this include, but are not limited to, that all structural controls meant to reduce pollutants in the stormwater are not shown, paved areas are not denoted, main truck routes are not denoted, and dimensions (lengths, widths, direction, etc.) of impervious areas are not denoted as required. These omissions make it impossible to have evaluated the permit application for adequacy and accuracy. Notwithstanding these specific inadequacies, the DEP issued a registration to the Rockwool facility.

33. The DEP failed to require Rockwool to describe stormwater handling systems for its entire plant. The extent of the physical area of the site addressed by the stormwater handling system that the site sketch depicts and the SWPPP narrative describe, is inadequate. Based on the information available, it appears that Rockwool treats only a portion of the stormwater runoff from its plant. Water from outside the three drainage areas, as depicted on the site sketch, is allowed to run off and infiltrate without treatment. First, based on available site maps and sketches submitted by Rockwool for other permit applications, there will be industrial processes occurring outside these drainage areas described, including raw material

handling and processing. These processes could produce fugitive or uncontrolled pollutants that are entrained in the stormwater. Second, a portion of the air emissions from Rockwool's smoke stacks will precipitate out within the property boundaries. These pollutants will become entrained in the stormwater. If untreated, the polluted water will enter the groundwater via direct or indirect infiltration carrying these pollutants with it. The stormwater handling system described does not address these pollution sources. Notwithstanding the requirements to ensure that the stormwater handling system treats all stormwater run off, the DEP issued Rockwool a Registration.

The DEP failed to properly evaluate the SWPPP by not requiring a complete and accurate Topographical Map as part of the permit.

34. The DEP approved the Rockwool registration, even though Rockwool submitted a topographical map that did not provide the statutorily required elements for it. Rockwool failed to provide true, accurate, or complete information on the topographical map it provided. The DEP's review of the map failed to identify all the errors and omissions in the map. The DEP did, on two occasions, request Rockwool to correct at least some of the errors and omissions. Despite this, the map finally provided by Rockwool on November 3, 2020 remains incomplete and insufficient to meet the statutory requirements. For example, the topographic map is statutorily required to depict all drinking water wells available in the public record or otherwise available or known to Rockwool. Rockwool was asked twice by the DEP in its review process to identify these wells, but Rockwool only marked 3 on the topographical map. This despite drinking well locations being publicly available from the department of public health, and Rockwool previously identifying 18 wells in its 2017 Voluntary Remediation Plan. The failure of DEP to carry out its obligations to ensure that accurate and complete information is provided by Rockwool to the DEP is beyond negligence

or discretionary; instead it represents an abuse of its discretion to allow Rockwool to endanger the drinking water of numerous unidentified drinking wells.

The DEP failed to properly evaluate the SWPPP by not requiring other specific regulatory requirements.

35. The DEP approved the Rockwool registration, even though Rockwool failed to identify the specific individuals within the organization who are responsible for developing the SWPPP and assisting the manager in its implementation, maintenance, and revision, within the SWPPP, as required by the permit conditions. Rockwool failed to provide accurate and complete information regarding its SWPPP committee.

36. The DEP approved the Rockwool registration, even though Rockwool failed to include the preventive maintenance program that identified the inspection and maintenance schedule of stormwater pollution prevention devices, as well as the details for the inspections and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters in the SWPPP. Rockwool refers to the program and states there will be a program but it does not include the program or procedures in the SWPPP as required by the permit conditions. The DEP did not require Rockwool to include the preventative maintenance program in the SWPPP. This omission of the preventative maintenance program in the SWPPP prevents the DEP from evaluating the sufficiency of the program and also prevents enforcement of the program.

37. The DEP approved the Rockwool registration, notwithstanding that Rockwool failed to address sediment and erosion prevention in the final version of the SWPPP. Rockwool states in the regulatory cross reference table that it has addressed sediment and erosion prevention in the SWPPP, but the section and page that Rockwool refers to do not exist in the final SWPPP. The DEP failed to identify that this critical activity was missing or to require that

Rockwool add the sediment and erosion control plan to the SWPPP prior to approval of the permit registration.

The DEP failed to require Rockwool Fulfill the Groundwater Protection Plan Requirements.

38. The DEP approved Rockwool's Registration notwithstanding that Rockwool's Groundwater Protection Plan (GPP) does not fulfill the statutory or permit requirements. Rockwool's GPP does not provide a true, accurate and complete "inventory of all operations which may reasonably be expected to contaminate the groundwater resources with an indication of the potential for soil and groundwater contamination from those operations"⁴ as the permit says it shall do. Rockwool failed to provide true, accurate, and complete information in this inventory. This includes, but is not limited to, Rockwool failing to identify all outside material storage areas or bulk storage or distribution areas. Rockwool failed to identify the stormwater handling system, including the wet ponds as an operation which may contaminate groundwater resources via leaks, liner failures, and infiltration. The DEP did not require that these omissions be corrected in the GPP prior to approval. These omissions and lack of detail in its description made it impossible for the DEP to adequately evaluate the Groundwater Protection Plan for efficacy, or for the public to review it.

39. The DEP approved Rockwool's registration notwithstanding that the GPP is vague and does not "provide a thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources"⁵ as the permit states it shall do. Rockwool failed to provide true, accurate and complete information about the,

⁴ 47 - CSR 58-4(11)(1)

⁵ Multi-sector General Permit, Page 37, first paragraph, paragraph 2

procedures designed to protect groundwater from identified potential contamination sources and provided no information about sources they failed to identify. The plan lacks sufficient detail to allow for appropriate evaluation of protection measures or enforcement of such measures. An example of this is, when discussing waste materials, instead of providing a thorough and detailed description of procedures designed to protect the ground water Rockwool simply states "their potential to impact groundwater is considered very low." The DEP failed to require Rockwool to correct these deficiencies before approving the permit.

40. The DEP did not require Rockwool to provide all necessary information regarding the underground pipelines at its site in its GPP. Rockwool's application materials do not provide the true, accurate, and complete information necessary to evaluate its ability to protect the ground water from contaminants carried in underground pipelines. Rockwool failed to catalog all underground pipelines that may reasonably pose a risk to the groundwater. Rockwool failed to fully and accurately described the materials being carried in the underground pipelines. Rockwool's GPP fails to provide a thorough and detailed description of procedures designed to protect groundwater from contamination carried in underground pipelines as the statute 47 CSR 58-4.11 and the permit states it shall. The DEP did not require these significant omissions in the GPP to be addressed prior to the approval of the permit registration.

41. The DEP approved the Registration permit, even though Rockwool's GPP does not provide a thorough and detailed summary of all activities carried out under other regulatory programs which have relevance to groundwater protection as required by both the statute and the general permit conditions. The DEP permit reviewer requested that Rockwool provide this thorough and detailed summary. However, when Rockwool resubmitted the GPP following this request, minimal changes were made to this section and no information or

detail on the activities carried out under other regulatory programs was given. Further Rockwool continues to omit consideration of the activities and process materials and waste stored and processed on the Melt for Reuse area. These omissions and lack of detail in description make it impossible to adequately evaluate the Groundwater Protection Plan for efficacy.

The DEP Failed to Require Rockwool To Provide Analytical Data for Basic Parameters

42. The DEP failed to require Rockwool to identify whether it expects to have toxic pollutants or phenols present in its stormwater, as required by statute and permit conditions. Rockwool failed to provide true, accurate or complete information regarding the toxic pollutants or phenols expected to be present in the stormwater. Rockwool failed to answer the application question, leaving it entirely blank. However, it is known that several of these substances will be in use at the plant or contained within the air emissions that are expected to fall to the ground on the plant property. For example, it is known from the air permit that lead is a component of the air emissions from the plant and, therefore, may be entrained in the rainwater. The remainder of the questions in the analytical data section, Question 18, were answered with "all not present". It is difficult to analyse the accuracy of these statements because Rockwool failed to provide the appropriate discussion and consideration of processes and chemicals involved in them in the SWPPP that have the potential to pollute stormwater (See, also paragraph 25, 26, 27, and 28) The DEP evaluated this incomplete permit, and approved it without requiring Rockwool to at least answer this critical issue.

The DEP failed to required the Spill Prevention Control and Countermeasure plan be complete and accurate

43. The DEP failed to require the Spill Prevention Control and Countermeasure plan be complete and accurate. The DEP failed to require Rockwool to include the Shepherdstown Source Water Protection Area in its Spill Prevention Control and Countermeasure Plan (SPCC). This is critical because Rocky Marsh Run is the receiving stream for the plant and it is a potential water source for Shepherdstown. The DEP failed to require Rockwool to sign the SPCC. Despite these errors and omissions, the DEP approved Rockwool's registration.

The DEP Failed to Require Rockwool to Address Issues Arising from Vulnerable Groundwater Resources.

44. The DEP failed to require Rockwool to appropriately "address the issues arising from locating in the areas of a potentially more vulnerable groundwater resource".⁶ Rockwool failed to provide true, accurate, and complete information about the karst, wetlands, faults, subsidence, and more vulnerable groundwater resources at its site in its application. The DEP failed to require Rockwool meet the statutory requirement to explain how Rockwool would mitigate the unique characteristics of the chosen site that make the groundwater at this site exquisitely sensitive to contamination including karst, faults, subsidence, and wetlands. These features are known to be present within the site. The features are not all depicted on the site sketch, nor are they appropriately addressed in the narrative of the SWPPP. Rockwool failed to appropriately address this requirement in its application for registration. Notwithstanding this identified failure, the DEP issued Rockwool's registration anyway.

The DEP failed to Require Rockwool to Design a Stormwater Handling System Functional in Karst.

⁶ 47-CSR-58-4(10)

45. The DEP issued a Registration to Rockwool, without ensuring that the Rockwool stormwater design was appropriate for karst hydrogeology. Rockwool's stormwater handling system and its identified Best Management Practices (BMPs) are not designed in accordance with the DEP guiding documents on stormwater design in karst areas or karst areas in the Chesapeake Bay watershed. The BMPs employed will cause a greater risk for the pollutants Rockwool's operation produces to enter the groundwater at the site. Rockwool's failure to appropriately consider the potential for plant operations to pollute stormwater, and the contents of those pollutants, and to fully characterize the receiving stream and the groundwater at the site, mask the true impact these design errors and inadequacies will have on tens of thousands of peoples' drinking water, waters of the state, and navigable waters of the US. For example, the large amount of water (86,330 gallons per/day on average) that will discharge via outlet 001 is likely to develop a sink hole. That area of the site has already developed several sinkholes. For example, the large wet ponds that drain 7 to 78 times the area recommended are at increased risk for catastrophic failure of the liner system, secondary to sinkhole formation due to increased weight on the subsurface. This error represents an arbitrary and capricious abuse of discretion by the DEP.

Stormwater Contamination by Air Emissions Toxic Fallout

46. Throughout the application and documents contained within it the DEP allowed Rockwool to completely ignore the pollutants that will fall out of the air emissions on the Rockwool property. Rockwool failed to give true, accurate, and complete information about the effect of its toxic air emissions and fall out on the stormwater at its site. These pollutants will fall on all surfaces – roofs, parking lots, ponds, grass, etc., and will become entrained in the stormwater as it washes over these surfaces. These pollutants will be entrained in all of

the stormwater from the entire property and surrounding land. By not including the fallout from the air emissions as a potential source of stormwater pollution Rockwool avoided discussing the pollutants contained in these emissions, and how these pollutants would be effectively removed from the stormwater before it is discharged or allowed to infiltrate. This is a critical consideration as nearly all of the water discharged from this plant, and stormwater that falls on it, will quickly find its way to groundwater via either direct or indirect infiltration. Without addressing these pollutants and how they will be removed from stormwater this permit is insufficient to prevent significant ground water contamination. Both the DEP and Rockwool failed to analyze the risks of the toxic impact of these entrained air pollutants on the ground water quality. Not requiring Rockwool to address this is an egregious example of DEP arbitrary and capricious abuse of discretion.

Failure to Require Groundwater Monitoring

47. The DEP failure to require Rockwool to develop a stringent mandatory groundwater monitoring plan is an arbitrary and capricious abuse of discretion. The groundwater monitoring plan that was approved as part of the MSGP registration is only voluntary, does not require representative analysis, and is of very limited duration. The DEP despite having statutory ability to do so, did not require Rockwool to have a mandatory, long term monitoring program that measures pollutants representative of those produced by Rockwool in its air emissions and other industrial processes. Further, Rockwool did not describe in the Groundwater Protection Plan how the well head of the monitoring wells would be protected. The DEP did not require this error to be corrected following addition of the groundwater monitoring program.

Failure to Ensure Consideration and Protection of Endangered Species

48. The DEP issued Rockwool a Registration under the Permit, even though Rockwool failed to address how its project could affect federally endangered and threatened species, as required by law. Specifically, Rockwool failed to address the Madison Cave Isopod. Although Rockwool contacted the US Fish and Wildlife Service in 2017, it has not reported that it has had contact with the Service since that time. Upon information and belief, Rockwool knows or should know that the Service has modified its original position regarding the potential existence of the MSI on the Rockwool site. In addition, the Stormwater handling system as it is described in the current application appears to pose a danger to migratory birds and bald eagles, both of which are federally protected from unpermitted taking including poisoning, and the DEP failed to require Rockwool to address these issues.

Rockwool Failed To and/or Refused to Provide Information

49. The DEP approved Rockwool's registration despite Rockwool failing and, in some cases, refusing to supply information required to be in the permit, and despite the information being requested by the DEP on several occasions. One example is the topographical map. Despite being asked specifically by the permit reviewer, Rockwool failed to depict all drinking water wells listed in public records or otherwise known to the applicant. This failure and refusal to provide information, means the registration application and permit are incomplete and inadequate for an accurate and competent review of the risks that the operation of this plant poses to water resources, and the adequacy of the planned measures to adequately mitigate such risks. The DEP failed to require Rockwool to produce requested information or review such information prior to approval of the permit. The DEP reviewed and approved an incomplete permit application.

Rockwool Failed to Fulfill Its Duty to Inform

50. The DEP approved Rockwool's registration notwithstanding that Rockwool failed to inform the permit reviewer of, and to appropriately change its application and permit materials, to reflect major changes Rockwool made in its stormwater handling and operations that may affect stormwater pollution. The changes were in responses to reviewer comments on Rockwool's Construction Stormwater General Permit registration application in February 6, 2020, and Rockwool's application for modification of Rockwool's Construction Stormwater General Permit registration October 9, 2020. These changes were omitted from the SWPPP and GPP submitted earlier as part of its MSGP registration application on October 13, 2020. One specific example includes the addition of an entirely new stormwater outlet and material handling areas outside the stormwater handling system. The DEP failed to require Rockwool to modify its permit to reflect these important changes.

DEP Failed to Re-Open Public Comment Period as Appropriate

51. The DEP failed to comply with mandatory statutes and regulations that require that where, as here, a company makes significant changes to its permit materials and plans that the DEP "shall" reopen the public comment period. In this case the DEP failed to comply with the statutory requirements, and failed to reopen that public comment period after significant changes were made to Rockwool's permit materials. At the direction of the DEP, Rockwool significantly revised several conditions of the permit that had been sent to initial public notice. The permit has had changes in the SWPPP and GPP including a change in the reported receiving stream. A groundwater monitoring plan was added, the dewatering plan for the rainwater for reuse pond was changed, and a transition period was added. These significant changes and others should have triggered a reopening of the public comment period. The DEP

failed to reopen the public comment period prior to approving the permit. It did not have the authority to ignore this requirement, and failure to do so is an abuse of its discretion.

Rockwool Fails to Meet the Statutory Requirements of Eligibility for The General Permit

52. The DEP failed to require Rockwool to obtain an individual permit, as opposed to a registration, that would have more appropriately addressed the unique risks posed by this industrial installation in this locality to the ground and surface water of the state and US. The General permit is inappropriate for Rockwool's operation. A general permit may be written to regulate, within a geographical area, "a category of point sources other than separate storm sewers, if the sources (1) Involve the same or substantially similar types of operations; (2) Discharge the same types of wastes; (3) Require the same effluent limitations or operating conditions; (4) Require the same or similar monitoring..."⁷. Only one other large-scale mineral wool manufacturing facility exists in West Virginia, and it has an individual NPDES permit and is not registered under the MSGP. Rockwool proposes to employ a novel rainwater reuse system utilizing an open pond design, and appears to be the only such system on this scale in the state. Rockwool is the only mineral wool manufacturer operating in such a high-risk Karst hydrogeology in the US. This general permit does not cover entities with the same or substantially similar operations, that discharge the same types of waste, require the same operating conditions, or need similar monitoring. In this case the DEP exceeded its discretion by shuffling Rockwool in to the MSGP and not requiring it to obtain an individual permit.

⁷ 47 CSR 10 -13 (6)(2)(B) (1-4) Special NPDES Programs, General permits.

The Conditions This Permit Allows Are Prohibited

53. The DEP abused its discretion in this situation when it approved the registration under the permit, allowing for conditions that do not provide for compliance with the applicable requirements of the Clean Water Act and State environmental regulations and permit requirements. Therefore, this permit is prohibited. The operation of this plant will affect the quality of groundwater and this, nor any other permit obtained by the permittee, grants the permittee the lawful permission to do so. Therefore, the operation of this plant as described in this permit registration is prohibited and unlawful.

Relief Requested

Complainant seek the following relief:

54. The DEP should be ordered to withdraw the current Rockwool Registration in its entirety, and require Rockwool to reapply for an individual permit, in which all of the errors, omissions, inaccurate and incomplete information is corrected, and then provided to the DEP for full evaluation in compliance with the requirements of the statutes, regulations and requirements. This process would include another period of public comment and review.

55. In the alternative, Appellants request the DEP be mandated to withdraw the current Registration, and require Rockwool to submit a new application for Registration providing true, accurate and complete information on each of the Specific Objection that the EQB determines was inappropriately accepted by the DEP. This process would include another period of public comment and review.

56. Specifically, the appellants seek the relief outlined in Exhibit C.



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, West Virginia 25304-2345
Phone: 304-926-0495
Fax: 304-926-0496

Austin Caperton, Cabinet Secretary
<https://dep.wv.gov>

November 5, 2020

Roxul USA Inc.
665 Northport Avenue
Kearneysville, WV 25430

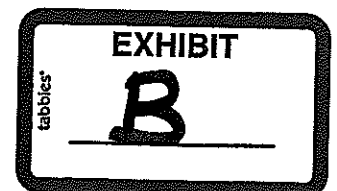
RE: WV/NPDES Permit No. WV0111457
General Permit Registration No.
WVG611896 Roxul USA Inc.,
Jefferson County

Dear Permittee:

The Division of Water and Waste Management has reviewed your General Permit Site Registration Application Form for the coverage of your activity. Based upon the information you submitted on this registration form, you are now authorized to operate under WV/NPDES General Water Pollution Control Permit No. WV0111457, issued September 12, 2019. The general permit can be found at: <http://www.dep.wv.gov/WWE/Programs/stormwater/multisector/Pages/home.aspx>. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance with the permit.

Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:

1. You are subject to the monitoring requirements of Sector E-2 of the General Permit.
2. In accordance with Section B.18. of the General Permit, you are required to have a complete storm water pollution prevention plan (SWPPP) and a groundwater protection (GPP) plan. These plans are to be retained on site and be available for review by the Director or the Director's authorized representative.
3. The current General Permit expires on September 12, 2024. If you wish to continue a regulated activity after the expiration date of this permit, provisions for coverage will be made during the public notice process for any new General Permit to be issued at that time.
4. Facilities permitted to discharge pollutants to the waters of the State under Chapter 22, Article 11 of the West Virginia Code are required to test their effluent in order to verify permit compliance. This testing is the responsibility of the permittee and these test results are to be submitted to this office on the enclosed Discharge Monitoring Report (DMR) forms.



Special Condition. The approved Groundwater Protection Plan (GPP) shall be maintained at the plant site and shall be available for inspection by the Division of Water and Waste Management personnel. The GPP approval afforded by this permit shall not relieve the permittee of any requirements pertaining to the Above Ground Storage Tank (AST) Program.

All monitoring required by this permit is benchmark monitoring. This monitoring is not an effluent limitation and should not be construed as such it is merely an indicator of whether or not the facilities discharges indicates if there is a reasonable potential to violate state water quality standards. If the benchmarks are exceeded then the permittee must immediately review both the stormwater and groundwater protection plans to reduce pollutant levels to meet the benchmark levels.

If required by the assigned industrial sector, you must perform this sampling and analysis once every three (3) months. However, the DMR forms are to be completed and submitted to this office 25 days following the end of each required three (3) month sampling period. Failure to submit required DMRs is a violation of the permit and can lead to enforcement actions being taken by this agency for noncompliance. It is suggested that several copies of the enclosed DMR forms be made for your future use, as this office does not supply permittees with DMR forms. Your first DMR is due within 25 days after your first required reporting period.

During the review of your site registration application form it was discovered that the pollutant analysis for the eight baseline parameters required of all sites was not submitted for outlets 001 and 002. Within sixty (60) days of your initial plant start-up, or as soon thereafter as climatic conditions allow, you must submit this analysis. Please be advised that your monitoring requirements may be subject to change based upon this analysis.

Based upon the types of operations conducted at your site the following monitoring parameters have been added to your regular sector E-2 sampling.

Outlets 001 and 002: Total Recoverable Aluminum, Oil and grease, Ammonia Nitrogen, Chemical Oxygen Demand, Total Recoverable Copper, Total Recoverable Zinc, Sulphur, Total Recoverable Arsenic, Total Recoverable Selenium, Total Recoverable Nickel, Total Mercury, Sulfate and Total Recoverable Lead.

Your annual permit fee has been assessed as \$1,000.00. You will be invoiced by this agency one month prior to the anniversary date of your original approval date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

Finally, note that copies of all future correspondence regarding the permit registration must be sent to the following addresses:

Department of Environmental Protection
Division of Water and Waste Management
Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

Department of Environmental Protection
Environmental Enforcement
22288 Northwestern Pike
Romney, WV 26757

Roxul USA Inc.
Page 3

The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact Patrick Burch of this Division at (304) 926-0499 extension 43813, or by email at Patrick.D.Burch@wv.gov.

Katheryn Emery, P.E.
Acting Director
WV DEP-Division of Water & Waste Mgt.
601 57th St SE
Charleston, WV 25304-2345

EXHIBIT C

1. Revise the Permit to include in the individual permit that Rockwool's entire property must be treated as a severe stormwater hotspot. Require that all stormwater from the property be collected treated on site and discharged to a PTOW.
2. Revise the permit to prohibit any and all wet ponds.
3. Revise the Permit to include a strict prohibition of infiltration at the site.
4. Revise the Permit to require the revision of the SWPPP to include a full, true, accurate, and complete inventory of all the types of materials handled, the location of material management activities, and types of material management activities.
5. Revise the Permit to require revision of the SWPPP to include consideration of all these factors when evaluating the pollution potential of runoff from various portions of an industrial plant: loading and unloading operations, outdoor storage activities; fueling operations; vehicle maintenance and cleaning; outdoor manufacturing or processing activities; dust or particulate generating processes; the portion of the air emissions that fall to the ground on and near the property and waste disposal practices.
6. Revise the Permit to require revision of the SWPPP to include consideration of the toxicity of chemicals; quantity of chemicals used, produced, or discharged; and nature and uses of the receiving waters including the groundwater.
7. Revise the Permit to require revision of the SWPPP to include implementation of specific measures and monitoring that will prevent the discharge or infiltration of stormwater with pollutants from by these inventoried locations and activities.
8. Revise the Permit to require revision of the SWPPP to identify specific individuals within the organization who are assisting the manager in its implementation, maintenance, and revision of the SWPPP.
9. Revise the Permit to require revision of the SWPPP to include the Preventative Maintenance Program.
10. Revise the Permit to require revision of the SWPPP to include the sediment and erosion control plan.
11. Revise the Permit to require revision of the GPP to include a true, accurate and complete inventory of all operations which may reasonably be expected to contaminate the groundwater resources with an indication of the potential for soil and groundwater contamination from those operations, including but not limited to the portion of the air emissions that fall to the ground on or near the property.
12. Revise the Permit to require revision of the GPP to include a true, accurate and complete, thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources including but not limited to the portion of the air emissions that fall to the ground on or near the property, and underground pipelines carrying process water.



13. Revise the Permit to require revision of the GPP to include an inventory of all underground pipelines and a true, accurate and complete description of the contents of those pipelines, using EPA and DEP definitions.
14. Revise the Permit to require revision of the GPP to include a true, accurate and complete, thorough and detailed summary of all activities carried out under other regulatory programs which have relevance to groundwater protection, including the Toxic Substances Control Act.
15. Revise the Permit to require a mandatory groundwater monitoring program for the entire length of the permit, with frequent groundwater monitoring for the chemicals most likely to pollute the groundwater, in the event of an accident or incident.
16. Revise the Permit to require revision of the GPP to require Rockwool maintain a protection plan for the monitoring well head.
17. Revise the Permit to require Rockwool to have a groundwater die test performed to inform the groundwater monitoring program.
18. Revise the Permit to include a true, accurate and complete topographical map that depicts the following:
 - a. The facility.
 - b. The property boundaries of the facility, which clearly show the outline of the facility, including the legal boundaries.
 - c. A one-mile radius from the property boundaries.
 - d. The location of each of its hazardous waste treatment, storage, or disposal facilities.
 - e. The location of the drinking water wells in the public record and otherwise known to Rockwool and ERM, including:
 - i. The existence of an approximate location of private drinking wells that can be obtained from the health department.
 - ii. The wells in Rockwool's own VRP (Voluntary Remediation Plan) prepared by ERM and submitted to the DEP.
 - iii. The well head protection area for the North Jefferson Elementary School.
 - f. All water bodies within one mile, including the natural surface water body on the property.
 - g. All of the sinkholes on the entire property and all known sinkholes within the one-mile radius.
 - h. The source water protection area for Shepherdstown.
19. Revise the Permit to include provisions to protect migratory and other protected species of birds from the pollutants contained in Rockwool's stormwater by preventing possible contact of the birds with the water.
20. Revise the Permit to include a consideration of the Madison Cave Isopod.

21. Revise the Permit to require that public comment be repeated whenever the conditions are revised.
22. Any and all other such relief the Board deems appropriate.

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC.,
CHRISTINE L. WIMER, KAREN MICHELLE FREER,
AND GAVIN PERRY,**

Appellants,

v.

Appeal No.: _____

**KATHY EMERY, ACTING DIRECTOR,
DIVISION OF WATER AND WASTE MANAGEMENT,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

Appellee.

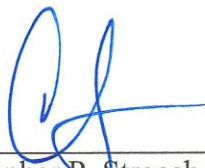
CERTIFICATE OF SERVICE

I, Christopher P. Stroeck, Esq., counsel for Appellants, do hereby certify that I have served a true copy of the foregoing **APPELLANT'S NOTICE OF APPEAL** upon the following parties via United States mail, postage prepaid, this 4th day of December, 2020:

WVDEP – OFFICE OF LEGAL SERVICES
601 57TH Street, S.E.
Charleston WV 25304

WVDEP
ACTING DIRECTOR, DIVISION OF WATER AND WASTE MANAGEMENT
601 57TH Street, S.E.
Charleston WV 25304

ROXUL USA, INC.
KENNETH J. CAMMARATO
4594 Cayce Road
Byhalia MS 38611



Christopher P. Stroeck, Esq.