



ARNOLD & BAILEY

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December 22, 2021
By Federal Express

Kenna M. DiRaimo, Clerk
West Virginia Environmental Quality Board
601 57th Street, SE
Charleston WV 25304

Re: Jefferson County Foundation, Inc., Christine L. Wimer,
Karen Michelle Greer and Gavin Perry v. Kathy Emery,
Acting Director, Division of Water and Waste Management,
Department of Environmental Protection

Dear Ms. DeRaimo:

Please find enclosed an original and six (6) copies of a **Notice of Appeal with attached Exhibit A, Exhibit B, Exhibit C and Exhibit D – Motion for Stay as well as the proposed Order Granting Stay** for filing in the above-captioned matter.

Please also find enclosed an original and five (5) copies of the **Application for Pro Hac Vice Admission of Michael A. Parker, Esquire.**

Thank you for your time and attention to this matter.

Very truly yours,

Debra J. Henshaw, Legal Assistant to
Christopher P. Stroeck, Esq.

Enclosure: as stated

cc+enc: **Michael A. Parker, Esquire**
Kathy Emery, Acting Director
Division of Water & Waste Management
Environmental Quality Board
Charles S. Driver, Esquire
Kenneth Cammarato

**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 & 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 23, 2021. (See, Notice of Registration attached hereto as Exhibit A, 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 the conditions of the General Permit No. WV0111457, 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 the conditions of the General Permit No. WV0111457 as well as certain statutory and regulatory requirements, passed by the State legislature, poses substantive risks to the groundwater of Jefferson County.

Relief Requested: The Appellants therefore pray that 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 Registration; 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.

A more specific request for relief is attached hereto, and incorporated herein, as Exhibit B.

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, and incorporated herein, as Exhibit C.

Request for a Stay: Appellants assert that they will suffer irreparable harm if Rockwool operates under the current inadequate MSGP Registration. Therefore, Appellants are filing a Motion for a Stay, which is attached hereto, and incorporated herein, as Exhibit D.¹

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@arnoldandbailey.com

¹ Appellants realize that, given the unavoidable timing of this Notice of Appeal, the requisite hearing on the Motion for a Stay would likely occur on or about December 27th. Recognizing that this is a time when many are on leave for the holiday season, creating potential administrative burdens on the Environmental Quality Board and other parties to this appeal, Appellants – despite being very concerned about irreparable harm – are amenable to a short delay of the hearing on the Motion for a Stay until the first week of January 2022.

Exhibit A - Appealed Action

Burch, Patrick D <patrick.d.burch@wv.gov>

Approval for WVG611896 Reissue, Roxul USA Inc., Jefferson County

1 message

NPDESEP, DEP <dep.npdeseep@wv.gov>

Tue, Nov 23, 2021 at 2:11 PM

To: Ken.Cammarato@rockwool.com

Cc: Connie J Anderson <connie.j.anderson@wv.gov>, Larry D Board <larry.d.board@wv.gov>, Michael K Kanehl <michael.k.kanehl@wv.gov>, "Dolly, Robin C" <robin.c.dolly@wv.gov>, "Judy, Hazel E" <hazel.e.judy@wv.gov>, Patrick D Burch <patrick.d.burch@wv.gov>, DEP NPDESEP <dep.npdeseep@wv.gov>

Roxul USA Inc.
665 Northport Avenue
Kearneysville, WV 25430

Physical Location:
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 on the information you submitted on this registration form, you are now authorized to operate under WV/ NPDES General Water Pollution Control Permit No. WV0111457. Please find attached your permit approval with your registration number assigned to your facility.

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.

If you have any questions or concerns please contact Patrick Burch at 304-926-0499 ext. 43813 or email at Patrick.d.burch@wv.gov .

Katheryn Emery, P. E., Acting Director
Division of Water and Waste Management
601 57th St SE
Charleston, WV 25304-2345
Phone: (304) 926-0495
Fax: (304) 926-0463

2 attachments

 **WVG611896.pdf**
55K

 **DMRs WVG611896 001, 002.pdf**



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 23, 2021

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, your Registration is being reissued. 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

WRD 2A-82
SECTOR: E-2

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER MONITORING REPORT

Final Limitations

GEN. PMT. REGISTRATION NO. WVG611896

FACILITY NAME: (Rockwool USA, Inc. RAN-5 Facility) ROXUL USA INC.

CERTIFIED LABORATORY NAME:

LOCATION OF FACILITY: KEARNEYVILLE, Jefferson County

CERTIFIED LABORATORY ADDRESS:

PERMIT NO.: WV0111457

OUTLET NO.: 001

WASTELOAD FOR THE MONTH OF:

INDIVIDUAL PERFORMING ANALYSIS:

Parameter	Quantity	Units	N.E.	Other Units			Measurement Frequency	Sample Type
				CEL*	Units	N.E.		
00530 (ML-1) RF-B Total Suspended Solids Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab
00400 (ML-1) RF-B pH Year Round	Reported							
	Permit Limits	N/A		Rpt Only Inst. Min.		Rpt Only Inst. Max.	1/quarter	Grab
00510 (ML-1) RF-B Ammonia Nitrogen Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab
01119 (ML-1) RF-B Copper, Total Recoverable Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab
01114 (ML-1) RF-B Lead, Total Recoverable Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab
01094 (ML-1) RF-B Zinc, Total Recoverable Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab
71900 (ML-1) RF-B Mercury, Total (as Hg) Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab
01074 (ML-1) RF-B Nickel, Total Recoverable Year Round	Reported							
	Permit Limits	N/A		N/A		Rpt Only Max. Daily	1/quarter	Grab

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer		Date Completed
Title of Officer		Signature of Principal Executive Officer or Authorized Agent

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER MONITORING REPORT

GEN. PMT. REGISTRATION NO. WVG611896

CERTIFIED LABORATORY NAME:

CERTIFIED LABORATORY ADDRESS:

FACILITY NAME: (Rockwood USA, Inc. RAN-5 Facility) ROXUL USA INC.

LOCATION OF FACILITY: KEARNEYSVILLE, Jefferson County

PERMIT NO.: WV011457

OUTLET NO.: 001

WASTELOAD FOR THE MONTH OF:

INDIVIDUAL PERFORMING ANALYSIS:

Parameter	Quantity	Other Units		Measurement Frequency	Sample Type
		Units	N.E.		
01104 (ML-1) RF-B Aluminum, Total Recoverable Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab
00980 (ML-1) RF-B Iron, Total Recoverable Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab
00981 (ML-1) RF-B Selenium, Total Recoverable Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab
00978 (ML-1) RF-B Arsenic, Total Recoverable Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab
81020 (ML-1) RF-B Sulfate Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab
81017 (ML-1) RF-B Chem. Oxygen Demand Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab
00552 (ML-1) RF-B Oil and Grease, Hexane EXTR. Year Round	Reported				
	Permit Limits	N/A	N/A	1/quarter	Grab

* CEL = Compliance Evaluation Level

		Date Completed
Name of Principal Executive Officer	Signature of Principal Executive Officer or Authorized Agent	
Title of Officer		

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WRD 2A-82
SECTOR: E-2

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER MONITORING REPORT

Final Limitations

GEN. PMT. REGISTRATION NO. WVG611896

FACILITY NAME: (Rockwool USA, Inc. RAN-5 Facility) ROXUL USA INC.

CERTIFIED LABORATORY NAME:

LOCATION OF FACILITY: KEARNEYVILLE: Jefferson County

CERTIFIED LABORATORY ADDRESS:

PERMIT NO.: WV0111457

OUTLET NO.: 002

WASTELOAD FOR THE MONTH OF:

INDIVIDUAL PERFORMING ANALYSIS:

Parameter	Quantity	Quantity		Other Units		CEL*	Units	N.E.	Measurement Frequency	Sample Type
		Units	N.E.	Units	N.E.					
00530 (ML-1) RF-B Total Suspended Solids Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab
00400 (ML-1) RF-B pH Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	S.U.		1/quarter	Grab
00610 (ML-1) RF-B Ammonia Nitrogen Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab
01119 (ML-1) RF-B Copper, Total Recoverable Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab
01114 (ML-1) RF-B Lead, Total Recoverable Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab
01094 (ML-1) RF-B Zinc, Total Recoverable Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab
71900 (ML-1) RF-B Mercury, Total (as Hg) Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab
01074 (ML-1) RF-B Nickel, Total Recoverable Year Round	Reported									
	Permit Limits	N/A		N/A		N/A	mg/l		1/quarter	Grab

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Name of Principal Executive Officer		Date Completed	
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STATE OF WEST VIRGINIA
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
 STORMWATER MONITORING REPORT

WRD 2A-82
 SECTOR: E-2
 GEN. PMT. REGISTRATION NO. WVG611896

CERTIFIED LABORATORY NAME:
 CERTIFIED LABORATORY ADDRESS:

FACILITY NAME: (Rockwool USA, Inc. RAN-5 Facility) ROXUL USA INC.
 LOCATION OF FACILITY: KEARNEYSVILLE, Jefferson County
 PERMIT NO.: WV011457 OUTLET NO.: 002

WASTELOAD FOR THE MONTH OF:

INDIVIDUAL PERFORMING ANALYSIS:

Parameter	Quantity	Units	N.E.	Other Units		CEL*	Units	N.E.	Measurement Frequency	Sample Type
01104 (ML-1) RF-B Aluminum, Total Recoverable Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab
00980 (ML-1) RF-B Iron, Total Recoverable Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab
00981 (ML-1) RF-B Selenium, Total Recoverable Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab
00978 (ML-1) RF-B Arsenic, Total Recoverable Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab
81020 (ML-1) RF-B Sulfate Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab
81017 (ML-1) RF-B Chem. Oxygen Demand Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab
00552 (ML-1) RF-B Oil and Grease, Hexane EXTR. Year Round	Reported Permit Limits	N/A			N/A	N/A	mg/l		1/quarter	Grab

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer	Date Completed
Title of Officer	Signature of Principal Executive Officer or Authorized Agent

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**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. _____

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

Appellee.

EXHIBIT B – RELIEF REQUESTED

1. Rescind the 2020 MSGP registration and order that a complete, current, and accurate application be submitted on the appropriate form for an individual NPDES permit.
2. Order that all applicable individual NPDES permitting requirements be completely and accurately addressed.
3. Order that the entire Rockwool facility be treated as a severe stormwater hotspot and require that all stormwater be treated before discharge.
4. Order the elimination of approval for all wet ponds for the Rockwool facility.
5. Order the elimination of large-scale infiltration from the Rockwool facility.
6. Order a strict prohibition of infiltration of untreated stormwater from the Rockwool facility.
7. Order that all water for reuse be stored in an appropriate vessel with appropriate leak detection and monitoring system.

8. Order that all concrete areas used for storage of raw material, in process material, waste material or material intended for recycling be lined.
9. Order that the SWPPP include all requisite elements, including but not limited to the following:
 - a. A true, accurate, and complete inventory of all the types of materials handled, the location of material management activities, and types of material management activities.
 - b. 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.
 - c. Consideration of the toxicity of chemicals; quantity of chemicals used, produced, or discharged; and nature and uses of the receiving waters including the groundwater.
 - d. Implementation of specific measures and monitoring that will prevent the discharge or infiltration of stormwater with pollutants from these inventoried locations and activities.
 - e. Identification specific individuals within the organization who are assisting the manager in its implementation, maintenance, and revision of the SWPPP.
 - f. Documentation of a comprehensive preventative maintenance program identifying the inspection and maintenance schedule of stormwater pollution prevention devices, as well as the details for the inspections and testing plant equipment and systems.
 - g. A sediment and erosion control plan.
10. Order that the GPP be revised to address all the requirements of W. Va. C.S.R. § 47-58-4.11, including, but no limited to, a true, accurate and complete:

- a. Inventory of all operations that 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.
- b. 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.
- c. Inventory of all underground pipelines and a true, accurate and complete description of the contents of those pipelines using EPA and DEP definitions.
- d. Thorough and detailed summary of all activities carried out under other regulatory programs which have relevance to groundwater protection.
- e. Requirement Rockwool maintain a protection plan for all well heads on its property including the monitoring wells.

11. Order that the Groundwater Monitoring Program be revised to include all requisite elements, including but not limited to the following:

- a. Make the program mandatory for the entire length of the permit, with frequent groundwater monitoring for the chemicals Rockwool is likely to pollute the groundwater with.
- b. Require Rockwool to have a groundwater dye study performed to identify surface springs affected by Rockwool's outlets and areas of infiltration on its property.

- c. Require Rockwool to monitor the identified springs monthly for the same parameters required to be monitored in the stormwater discharge.
- d. Require stormwater discharge monitoring month

12. Order that the Topographical Map be accurately revised to include all requisite elements, including but not limited to 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.

13. 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. _____

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

Appellee.

EXHIBIT C – SPECIFIC OBJECTIONS

I. The Parties

1. Plaintiff Jefferson County Foundation (hereinafter, “JCF”) is a West Virginia based nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code, formed for the purpose of supporting and promoting effective and accountable government, sustainable development, and the protection of health, heritage, and the environment in the Eastern Panhandle of West Virginia. JCF’s purpose includes protecting the waters of Jefferson County and preventing the contamination of the groundwater and waterways that flow into the Potomac River and Chesapeake Bay. As such, JCF has an interest in and will be affected by the general permit registration at issue in this appeal. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438.
2. 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.

3. 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, and she has a drinking water well that will be significantly impacted by the pollution authorized under this general permit registration. Appellant Wimer also keeps horses on her property, and a contamination of her drinking water wells would make keeping horses on their land infeasible, thereby harming the use and enjoyment of her land.

4. 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, and she has a drinking water well that will be impacted by the pollution authorized under this general permit registration. Appellant Freer also keeps horses on her property as a business enterprise, and a contamination of her drinking water wells would make keeping horses on their land infeasible, thereby harming her business and the use and enjoyment of her land.

5. 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, and he has a drinking water well that will be impacted by the pollution authorized under this general permit registration.

6. The West Virginia Department of Environmental Protection (hereinafter, "DEP") is a government agency of the State of West Virginia. The challenged permit registration was issued by

the DEP's Division of Water & Waste Management, by Kathy Emery, P.E., Acting Director, and has a primary address of 60I 57th Street SE, Charlestown, West Virginia, 25304.

II. Facts and Procedural History

7. On March 3, 2014, The West Virginia/National Pollutant Discharge Elimination System (hereinafter, NPDES”) Multi-Sector General Water Pollution Control Permit (hereinafter, “MSGP”) (WV0111457) was issued, it became effective on April 2, 2014.
8. On February 7, 2019, the 2014 NPDES MSGP (WV0111457) was administratively extended by the DEP until August 31, 2019.
9. On July 22, 2019, Rockwool submitted its application (WVG611896) for a new registration under the MSGP (WV0111457).
10. On July 24, 2019, Rockwool’s application (WVG611896) was deemed administratively complete by the DEP.
11. On August 14, 2019, the 2014 NPDES MSGP (WV0111457) was again extended by the DEP until December 31, 2019.
12. On September 12, 2019, the NPDES MSGP (WV0111457) was reissued.
13. 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.
14. On October 11, 2019, the NPDES MSGP was appealed to the West Virginia Environmental Quality Board (hereinafter, “EQB”) by the Builders Supply Association of West Virginia. The 2019 MSGP remained in effect during this time as no stay was sought. (19-13-EQB)
15. On October 12, 2019, the NPDES MSGP (WV0111457) that was issued on September 12, 2019, became effective, replacing the 2014 permit.
16. On October 23, 2019, a public hearing about the draft general permit was held in Shepherdstown.

17. On November 2, 2019, the extended public comment period ended. The Appellants all submitted public comments.
18. On January 26, 2020, Jefferson County Foundation submitted a petition to the DEP Secretary requesting that Rockwool be required to obtain an individual NPDES permit, as opposed to a Registration under the general NPDES permit, a response to which was never received.
19. On January 30, 2020, the EQB issued an Order approving a proposed order resolving the appeal of the 2019 NPDES MSGP accepting the settlement between the DEP and the Builders Supply Association of West Virginia.
20. 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.
21. On November 05, 2020, Rockwool's MSGP registration (WVG611896) was approved under the 2019 MSGP General Permit No. WV0111457.
22. On December 04, 2020, Jefferson County Foundation, Inc. appealed Rockwool's MSGP registration (WVG611896). The evidentiary hearing in that case commenced on July 8, 2021, and is set to conclude on February 10 and 11, 2022.
23. On January 26, 2021, the Modified 2020 MSGP was issued (hereinafter "2020 MSGP").
24. On February 25, 2021, the 2020 MSGP became effective and replaced the 2019 MSGP.
25. On February 25, 2021, the 2019 MSGP was made void by replacement.¹
26. May 27, 2021, was the deadline given in the 2020 MSGP for all Permittees under the 2019 MSGP with registrations approved from April 12, 2019, through February 25, 2021, and that had had no changes that could affect stormwater discharges since the previous registration approval date

¹ Federal regulations at 40 C.F.R. § 122.6(d) state "[s]tates authorized to administer the NPDES program may continue . . . State-issued permits until the effective date of the new permit."

to submit a Renewal Certification Document on which eligible permittees could apply for permit coverage under the 2020 MSGP.

27. As of May 28, 2021, Rockwool had not submitted the Renewal Certification Document or any other application type for registration under the 2020 MSGP in the Electronic Submission System (ESS).

28. On October 22, 2021, Rockwool filed a renewal certification document under the 2020 MSGP in the ESS.

29. On November 19, 2021, Rockwool applied for a reissuance of its MSGP Registration under the 2020 MSGP using a “Form I NPDES Industrial” form.

30. On November 23, 2021, Rockwool withdrew the October 22, 2021, renewal certification document.

31. On November 23, 2021, Rockwool’s MSGP registration (WVG611896) reissuance was approved under the 2020 MSGP General Permit No. WV0111457.

III. Specific Objections

32. Appellants assert that in issuing Rockwool a Registration under the 2020 MSGP on November 23, 2021, based on Rockwool's November 19, 2021, application, the DEP acted in an arbitrary and capricious manner, and/or exceeded its statutory authority. The laws require the DEP to determine Rockwool's compliance with various statutory, regulatory, and/or permit terms and conditions, and do not give the DEP the authority to ignore relevant legal 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 water resources of Jefferson County and the region from the operation of the Rockwool facility.

33. The DEP failed to require Rockwool to submit a new application for permit coverage and unlawfully approved Rockwool's registration under the 2020 MSGP. Referring to entities previously registered under the 2019 MSGP, such as Rockwool, the 2020 MSGP requires that "Permittees with registrations approved from April 12, 2019, through February 25, 2021, and that have had no changes that could affect stormwater discharges since the previous registration approval date may retain coverage under this GP by submitting a Renewal Certification Document."² The 2020 MSGP states that, "The deadline for submittal of the Renewal Certification Document is May 27, 2021."³ The 2020 MSGP also indicates that, "Permittees who qualify for but do not submit the Renewal Certification Document by May 27, 2021, must submit a completely new application for permit coverage. Until a valid registration is issued, such dischargers are operating without permit coverage, which is a violation of federal and West Virginia law."⁴ Rockwool's registration under the 2019 MSGP was approved on November 5, 2020. Therefore,

² W. Va. DEP, *2020 MSGP*, at 2.

³ *Id.* at 3.

⁴ *Id.*

Rockwool's deadline for submitting the Renewal Certification Document was May 27, 2021.

Rockwool applied for a reissuance of its MSGP registration on Nov. 19, 2021, nearly six months after the May 27th deadline. Therefore, Rockwool should have been required to "submit a completely new application for permit coverage per the explicit terms of the 2020 MSGP. Instead, the DEP allowed Rockwool to submit a "reissuance" application that did not contain the information required in a completely new application for permit coverage. The DEP does not have the authority to ignore the terms of the 2020 MSGP, and its failure to require a new application for permit coverage was arbitrary, capricious, and an abuse of its discretion.

34. The DEP failed to require Rockwool to submit a completely new application for permit coverage despite Rockwool having changes in its discharges since its last registration, and, in doing so, unlawfully approved Rockwool's 2020 MSGP registration. As noted in Paragraph 33, above, only permittees that have had, "no changes that could affect stormwater discharges since the previous registration approval date may retain coverage under this [general permit] by submitting a Renewal Certification Request."⁵ In its November 19, 2021 application Rockwool answered "yes" to the question: "Since issuance of your existing permit have you added any outlets, modified or added to your treatment or disposal system in any way, increased the volume or concentration or your waste(s) or waste stream(s), or extended, modified or added to your facility any operation which would cause an increase in the volume or concentration of waste(s) discharged?"⁶ This answer indicates that Rockwool made changes that could affect its stormwater discharges. As such, Rockwool was not eligible to submit a Renewal Certification Document and should have been required to submit a new application for permit coverage. The DEP does not have the authority to

⁵ *Id.* at 2.

⁶ See Roxul USA Inc., *Reissue NPDES Industrial #1 Permit Application (Permit Id. No. WVG611896)*, at 3.

ignore the terms of the 2020 MSGP, and its failure to require a new application for permit coverage was arbitrary, capricious, and an abuse of its discretion.

35. The DEP failed to require Rockwool to use the correct Electronic Submission System (hereinafter, “ESS”) form when submitting the application as required by the 2020 MSGP permit conditions, and, in doing so, unlawfully approved Rockwool’s 2020 MSGP registration. The 2020 MSGP requires that “new applications for permit coverage, applications for renewal of permit coverage, and applications for modifications to existing permit coverage must be submitted using the proper forms via ESS.”⁷ The appropriate form for completely new applications for permit coverage under the 2020 MSGP is the “Storm Water Associated with Industrial Activity (Multi-Sector)” form. Rockwool used the “Reissue NPDES Industrial Form # 1” form (also titled “Form I NPDES Industrial” on the DEP website), and according to the DEP web page dedicated to individual NPDES permits this form is intended for individual NPDES permit applicants.⁸ The DEP does not have the authority to ignore the terms of the 2020 MSGP, and its failure to require Rockwool to use the proper form was arbitrary, capricious, and an abuse of its discretion.

36. The DEP failed to require Rockwool to submit a Stormwater Pollution Prevention Plan (hereinafter, “SWPPP”) as part of its application for the 2020 MSGP, and, in doing so, unlawfully approved Rockwool’s 2020 MSGP registration. The 2020 MSGP states that, “A complete application is required for all applicants.”⁹ Furthermore, Condition B.17 of the 2020 MSGP states,

⁷ 2020 MSGP, at 2.

⁸ The web page of the WVDEP Web site entitled “*National Pollutant Discharge Elimination System (NPDES) Individual Permits*” under the heading “Industrial” on the right-hand navigation bar is a tab called, “Documents and Forms” which includes the NPDES Industrial Form I, instructions for its use and the individual permit annual stormwater certification form. Form I cannot be found on the Multi-Sector web page of the DEP website nor was it found on any other page of the website. This web page can be found at <https://dep.wv.gov/ww/permit/individual/pages/default.aspx> (last visited on December 14, 2021).

⁹ 2020 MSGP, at 2.

“Each facility covered by this permit shall develop and implement a SWPPP...”¹⁰. No SWPPP was included in Rockwool’s Nov. 19, 2021,¹¹ application for reissuance of registration under the 2020 MSGP. Thus, irrespective of the form used in the reissuance application, the information provided was incomplete and insufficient to meet the standards of the 2020 MSGP. The SWPPP is a critical part of the MSGP registration and plays a pivotal role in protecting stormwater from industrial pollution. The DEP does not have the authority to ignore the terms of the 2020 MSGP, and its failure to require Rockwool to submit a complete application including a SWPPP was arbitrary, capricious, and an abuse of its discretion.

37. The DEP failed to provide public notice and public comment for this application despite it being expressly required by the 2020 MSGP permit conditions, and, in doing so, unlawfully approved Rockwool’s 2020 MSGP registration. The 2020 MSGP declares that, “A Statement for Billing and a public notice is required for the following application types: discharges at new facilities; discharges at existing facilities for which the renewal application is not submitted by the due date provided in the permit; applications to modify existing permit coverage to add new outlets, to discharge to streams not listed in the original application, and/or to add or change Sector/SIC Codes, such as when a manufacturing plant adds a new product line.”¹² No Statement of Billing was included in Rockwool’s Nov. 19, 2021 application. The 2020 MSGP also says, “New sources in this Permit are defined as stormwater discharges from any facility that began operations after the effective date of this General Permit, which is October 12, 2019. All other facilities’ discharges are defined as existing sources.”¹³ Rockwool began operation in July 2021, therefore, per this definition, Rockwool is a new facility and should have provided public notice of its application for

¹⁰ *Id.*, Condition B.17, at 36.

¹¹ See Roxul USA Inc., *Reissue NPDES Industrial #1 Permit Application (Permit Id. No. WVG611896)*, at 7.

¹² *Id.* at 2.

¹³ *Id.* at 3.

registration. Likewise, since Rockwool also did not submit its renewal application by May 27, 2021, the due date provided in the 2020 MSGP, Rockwool should have been required to give public notice and comment according to the 2020 MSGP's express requirements. The DEP does not have the authority to ignore the terms of the 2020 MSGP, and its failure to require Rockwool to provide for public notice and comment was arbitrary, capricious, and an abuse of its discretion.

38. The DEP failed to require Rockwool to obtain an individual NPDES to cover non-stormwater discharges not covered by the 2020 MSGP, and, in doing so, unlawfully approved Rockwool's 2020 MSGP registration. In its application, Rockwool requested to, "Allow sewage, industrial wastes or other wastes, or effluent therefrom, produced by or emanating from any point source, to flow into the waters of this State."¹⁴ Sewage and industrial waste are not permissible discharges under the 2020 MSGP, as the 2020 MSGP only covers stormwater and ten (10) expressly allowable non-stormwater discharges detailed in Section B.2. of the permit¹⁵, none of which include industrial wastes or sewage. Furthermore, permitting the discharge of sewage and industrial waste despite lack of coverage under the 2020 MSGP is a direct violation of the state's mandate under 40 C.F.R. § 123.1(g)(1).¹⁶ The DEP does not have the authority to ignore federal regulation and the terms of the 2020 MSGP, and by permitting the discharge of sewage and industrial waste not expressly allowed by the permit the DEP acted arbitrarily, capriciously, and abused its discretion.

¹⁴ Roxul USA, Inc., *Reissue NPDES Industrial #1 Permit Application (Permit Id. No. WVG611896)*, at 2.

¹⁵ *2020 MSGP*, at 28.

¹⁶ This federal regulation provides, in part, that, "the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA." 40 C.F.R. § 123.1(g)(1).

39. The DEP failed to require Rockwool to obtain an individual NPDES permit, as opposed to a registration, that would have addressed the unique risks posed to the ground and surface water by this industrial installation in this locality. The 2020 MSGP 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 ..." ¹⁷ Upon information and belief, 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. ¹⁸ Upon information and belief, 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. Upon information and belief, Rockwool is the only mineral wool manufacturer operating in such a high-risk Karst hydrogeology in the United States. 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 acted arbitrarily, capriciously, and abused its discretion by approving Rockwool for general permit coverage under the 2020 MSGP and not requiring it to obtain an individual permit.

¹⁷ W. Va. C.S.R. § 47-10-13.6.a.2.B.

¹⁸ Armstrong World Industries has an individual NPDES permit (Permit No. WV0116661), which was last issued on May 22, 2018. Prior to Rockwool's facility being sited and built in Kearneysville (Ranson) WV, only two other SIC code 3296 manufacturers were listed for WV: the Knauf facility in Inwood and the Armstrong World Industries plant in Millwood on the Ohio River. The Knauf plant uses exclusively glass cullet as a feedstock and is therefore a fiberglass insulation manufacturer. Only Armstrong World Industries uses the same feedstock and process chemicals (binders) that Rockwool does and is a direct competitor to Rockwool stone wool insulation and ceiling tile products. See: http://insulationinstitute.org/wp-content/uploads/2016/10/N000_Final-916.pdf (last visited Dec. 21, 2021).

40. The DEP failed to require Rockwool to submit true, accurate, or up-to-date information as part of its application for registration under the 2020 MSGP, and, in doing so, unlawfully approved Rockwool's 2020 MSGP registration. The DEP knew or should have known that multiple documents submitted as part of the November 19, 2021, application were out-of-date and therefore not true or accurate representations of current design or operation of the stormwater handling system at the Rockwool facility. These documents include, but are not limited to, the Groundwater Protection Plan, the Sinkhole Map, and Figure 3 Post Development Drainage Map. For example, the Sinkhole Map is missing sinkhole number 22, despite sinkhole 22 being identified more than a year before the submission of this application.¹⁹ In fact, Rockwool submitted a Sinkhole Map containing sinkhole 22 in its application for modification of its registration under the Construction Stormwater General Permit that was approved November 20, 2020.²⁰ The DEP's failure to require Rockwool to provide true, accurate, and up-to-date materials in the application is arbitrary, capricious and an abuse of its discretion.

41. If the DEP accepted the SWPPP from the 2019 MSGP as applying to the 2020 MSGP registration, then the DEP failed to require Rockwool to provide a compliant SWPPP that met the statutory and permit requirements and the DEP failed to require that Rockwool provide true, accurate, and complete information in the SWPPP. The following items were deficient in the 2019 MSGP SWPPP, and remain deficient if it is used as the SWPPP in the 2020 MSGP, such that either

¹⁹ See Roxul USA, Inc., *Reissue NPDES Industrial #1 Permit Application (Permit Id. No. WVG611896)*, at application attachment "1242345_1_RAN5 Sinkhole Map10122020.pdf". This map does not contain a demarcation of sinkhole number 22.

²⁰ See Roxul USA, Inc., *Application to "Modify NPDES/State Storm Water Construction" for the Ran 5 Project (Registration No. WVR108876) under Construction Stormwater General Permit (Permit Id. No. WV0115924)*, application attachment "*STABILIZATION PROGRESS MAP (11-19-20).pdf*". This map shows sinkhole number 22.

the pollution potential of stormwater could not be adequately or accurately evaluated or the management practices intended to prevent pollution of stormwater could not be evaluated:

- a. The SWPPP previously submitted by Rockwool as part of its application for registration under the 2019 MSGP could not simply be substituted in for the SWPPP in this application. Notwithstanding the fact that the 2020 MSGP permit conditions require entities such as Rockwool to submit a completely new application for permit coverage which should include a new SWPPP, the SWPPP previously submitted by Rockwool as part of its application for registration under the 2019 MSGP is by Rockwool's own admission out of date and inaccurate.²¹ In fact, it was so out of date and inaccurate as of July 7, 2021, that it could not even be used to inform a site inspection by DEP enforcement officials.²² This demonstrates that the issues with the November 19, 2021, application are not simply form issues but instead major substance and functional inadequacies. The DEP's failure to require Rockwool to submit an accurate and up to date SWPPP is arbitrary, capricious, and an abuse of its discretion.
- b. The DEP failed to require that Rockwool complete a risk identification and assessment, and a material inventory. The DEP also failed to require Rockwool to include all applicable potential pollution sources in the inventory when evaluating the pollution

²¹ See Rockwool's expert witness report, disclosed as part of the case, Jefferson County Foundation, Inc., et al. v. W. Va. DEP (Docket No. 20-13-EQB), "*Rebuttal to Linthicum Report*", dated May 11, 2021, at 7, comment B.

²² In the DEP inspection report for the Rockwool facility, dated July 7, 2021, the "Comments" section states, "It should be noted, Rockwool has submitted an updated SWPPP/GPP to WVDEP for approval, prior to this visit. The drawings submitted in the current SWPPP/GPP do not show the current outlay and are being revised with as built drawings. The GPP submitted as part of the November 19, 2021, application is the same without change as the GPP that was previously submitted and approved as part of Rockwool's original 2019 MSGP. This is presumably the same GPP that was available on site during the July 7, 2021, site inspection as no other GPP had been approved to that point. Further in September 2021 the appellants requested from the DEP as part of the 20-13 proceedings copies of any newly submitted SWPPP and GPP and were informed by the DEP council that no new versions had yet been submitted." See W. Va. DEP Inspection Report, dated July 7, 2021.

potential of runoff from various portions of the industrial plant. Furthermore, the DEP failed to require Rockwool to provide true accurate and complete information about the pollution potential of the potential sources it did inventory. Finally, the DEP failed to require Rockwool 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, which is arbitrary, capricious, and an abuse of its discretion.

- c. 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, as required by Condition 17.A.1.a of the 2020 MSGP. The DEP did not require Rockwool to provide true, accurate, and complete information about the outdoor manufacturing or processing activities, dust or particulate generating processes in its SWPPP. Upon information and belief, information contained in Rockwool's air permits demonstrate that it has uncontrolled outdoor manufacturing processes that produce dust and particulate matter.²³ Also, upon information and belief, 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.²⁴ The particulate matter from these sources and the pollutants they carry will pollute the storm water. The DEP failed to require Rockwool to describe and consider these sources in the evaluation of pollution potential

²³ See Roxul USA, Inc. *Application for Air Permit to Construct Permit* (Permit No. R14-0037), at 3.

²⁴ See *Id.* at attachment, "Prevention of Significant Deterioration Application - Appendix C Air Quality Assessment", Appendix 4 of Appendix C, dated December 2017.

of runoff from various portions of the industrial plant. These sources should be discussed and evaluated in the SWPPP as required in the permit.²⁵ 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, which is arbitrary, capricious, and an abuse of the agency's discretion.

- d. The DEP approved the Rockwool registration application, despite Rockwool's failure to identify and consider, as required,²⁶ all the waste disposal processes when evaluating the pollution potential of runoff from various portions of the industrial plant. The DEP did not require Rockwool to provide true, accurate, and complete information when evaluating the pollution potential of runoff from various portions of its property. Most notably, Rockwool was not required to include, as mandated,²⁷ 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 2020 MSGP.²⁸ 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."²⁹ Notwithstanding these failures, the

²⁵ 2020 MSGP, Condition B.17.A.1.a, at 37.

²⁶ *Id.*, Condition B.17.A.2.a.2, at 39.

²⁷ *Id.*

²⁸ *Id.*

²⁹ W. Va. C.S.R. § 47-58-4.3.b.

DEP approved the registration, which is arbitrary, capricious, and an abuse of the agency's discretion.

- e. The DEP further failed to consider the toxicity of chemicals; quantity of chemicals used, produced, or discharged; 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, as required by the 2020 MSGP.³⁰ The DEP should have required Rockwool to correct these errors and omissions in this section of the SWPPP. These omissions are critical elements necessary for risk identification and assessment and for a complete understanding of the potential for this operation and its stormwater handling to pollute ground, surface, and drinking water. Notwithstanding the 2020 MSGP's requirements that the DEP consider these issues to protect the water resources, the DEP issued the Rockwool registration.
- f. The DEP failed to require Rockwool to identify all the storage areas and waste areas on the Site Map. This is a requirement of the 2020 MSGP, which sets out specific requirements of what is to be included in the Site Map.³¹ Rockwool failed to provide true accurate and complete information about storage areas and waste areas on the Site Map. Examples include the Melt for Reuse Area³² and the recycled material stockpile both identified as "outdoor material storage areas" in Rockwool's construction air permit application materials³³; however, they are not identified in the Rockwool's 2020 MSGP

³⁰ 2020 MSGP, Condition B.17.A.2.a.2, at 39.

³¹ *Id.*

³² This area, referred to a Area B170, stores waste or "melt" from the furnace that is periodically crushed with other materials in this location and stored here for reuse.

³³ Rockwool's Air Permit to Construct (Permit No. 14-0037), issued April 30, 2018. Page 27 paragraph g(4) and g(5). section "g" is titled "Outdoor Material Storage Areas." Area B170 refers to the "Melt for Reuse Area"; it is nearly 20000 square foot area that has no roof and holds "tap out" from the furnace, a portable crusher, and the portable crushing operation.

registration application as a storage area. The storage of process wastewater is also not identified in the MSGP application. 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 determined by the DEP, which is a requirement per Condition B.17.A.1.a.1.³⁴ The DEP approval of the registration without ensuring that Rockwool identify all the storage areas and waste areas on the Site Map, was arbitrary, capricious, and an abuse of its discretion.

- g. The DEP failed to require Rockwool to identify the stormwater outlets on the Site Map as required by statutory and/ or permit conditions.³⁵ The DEP also failed to make Rockwool provide true, accurate, and complete information on the Site Map about stormwater outlets. For example, Outlet 001 is not only unmarked, but is not displayed on any version of the Site Map submitted to the DEP as part of the MSGP registration application. Rockwool's Site Map shows three drainage areas and two outlets. However, recent depictions of the final drainage patter in submissions for other permits show a fourth drainage area and a third outlet that Rockwool labels Outlet 003.³⁶ Yet this fourth drainage area and third outlet are not shown on any version of the Site Map 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 adequately done. The DEP failed to require the inclusion of Outlet 003 on the Site

³⁴ See also W. Va. C.S.R. § 47-58-4.3.

³⁵ See 2020 MSGP, Condition B.17. A.1.a.1, at 37; and W. Va. C.S.R. § 47-10-4.4, respectively.

³⁶ As part of Rockwool's June 21, 2019, application for "*Reissue NPDES/State Storm Water Construction*" (Registration No. WVR108876), issued on Feb. 25, 2020, Rockwool submitted the attachment, "Final Drainage Areas with Flow Lines.pdf" on February 6, 2020. This map has four drainage areas and three outlets.

Map, allowing Rockwool to begin operation with an unpermitted and unevaluated outlet. The DEP's failure to require Rockwool to identify all drainage areas and stormwater outlets is arbitrary, capricious, and an abuse of its discretion.

- h. The DEP failed to require Rockwool to identify the disposal method for the water, and the pollutants it contains, from the Rainwater for Reuse Pond. Rockwool is only permitted to send to the municipal sewer system domestic waste and wastewater from its internal reverse osmosis and water softener systems.³⁷ Rockwool has repeatedly claimed that no water will be discharged from the Rainwater for Reuse Pond and the normal operating level of the Rainwater for Reuse Pond will be approximately 2.5 feet, "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".³⁸ 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 prevention protocol for the Rainwater for Reuse Pond. The DEP requested this information, including the facts about how Rockwool was going to dewater the Rainwater for Reuse Pond and who would be retained to do that work and under what conditions. Notwithstanding the DEP's request and the permit requirements for this information, the DEP issued the registration without receiving any of that information in the permit, which is arbitrary, capricious, and an abuse of its discretion.

³⁷ See Modification No. 8 of Charles Town Utility Board Permit No. WV0022349, dated March 1, 2019, made to accommodate Industrial effluent from Rockwool.

³⁸ See Rockwool's October 13, 2020, SWPPP, at 18.

- i. 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 Map 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 Map, 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.³⁹ These processes could produce fugitive or uncontrolled pollutants that are entrained in the stormwater. Second, a portion of the air emissions from Rockwool's smokestacks will precipitate out within the property boundaries.⁴⁰ 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 SWPPP addresses all stormwater runoff, the DEP issued Rockwool a registration, which is arbitrary, capricious, and an abuse of the agency's discretion.
- j. The DEP failed to require Rockwool to submit an accurate Site Map, as required by the conditions of the MSGP. Rockwool failed to provide true, accurate, and complete

³⁹ See Application attachment "1247489_0_Site Drawing for CSWP Mod" submitted as an attachment to Roxul USA Inc.'s application to "Modify NPDES/State Storm Water Construction" for the Ran 5 Project (Registration No. WVR108876) under Construction Stormwater General Permit (No. WV0115924). The application was started on Oct. 9, 2020, and approved on Nov. 20, 2020. This map shows fuel storage and a "Rock warmer" well outside the depicted drainage areas.

⁴⁰ See Roxul USA, Inc., *Prevention of Significant Deterioration Application*, Appendix C, Air Quality Assessment, December 2017, Attachment 4, AERMOD concentration plots.

information in the Site Map. The site map is missing several other significant elements. As a result, the Site Map does not adequately depict the risks for stormwater pollution. It also does not accurately display the storm water controls such that neither can be evaluated appropriately. Examples of this include but are not limited to: all structural controls meant to reduce pollutants in the stormwater are not shown, not all paved areas are denoted, main truck routes are not denoted, and dimensions (lengths, widths, direction, etc.) of impervious areas are not denoted as required.⁴¹ 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, which is arbitrary, capricious, and an abuse of the DEP's discretion.

- k. The DEP failed to properly evaluate the SWPPP by not requiring a complete and accurate Topographical Map as part of the permit. The DEP approved the Rockwool registration, even though Rockwool submitted a Topographical Map that did not provide the elements the required by statute. 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 off 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.⁴² Upon information and belief, Rockwool was asked

⁴¹ Instructions for the MSGP form on the DEP's ESS system require the following, *inter alia*, to be included in a site sketch (a.k.a., site map): paved areas and buildings at the facility; structural control measures to reduce pollutants in storm water runoff; and that all areas and buildings should be described with lengths, widths, direction, etc.

⁴² W. Va. C.S.R. § 47-10-4.4.a.6.

twice by the DEP in its review process to identify these wells, but Rockwool only marked three wells on the topographical map.⁴³ This despite drinking well locations being publicly available from the department of public health, and, upon information and belief, Rockwool previously identifying 18 wells in its 2017 Voluntary Remediation Plan.⁴⁴ The failure of DEP to carry out its obligations to ensure that accurate and complete information regarding drinking water wells was provided by Rockwool is arbitrary, capricious, and an abuse of its discretion and allows Rockwool to endanger the drinking water from numerous unidentified drinking wells.

- l. 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, as required by the permit conditions.⁴⁵ The DEP's failure to require Rockwool to identify personnel responsible for SWPPP development, implementation, maintenance and revision is arbitrary, capricious, and an abuse of the agency's discretion.
- m. The DEP approved the Rockwool MSGP 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 states there will be a Preventive Maintenance Program, but it

⁴³ See Roxul USA, Inc., *New NPDES Industrial Permit Application* (Permit Id. No. WVG611896), at application permit reviewer Comments Notes: Oct. 7, 2020, Comment 4, and Oct. 30, 2020, Comment 2.

⁴⁴ See Roxul USA, Inc. (originally Jefferson Orchards), *Application to Participate in Voluntary Remediation Program*, June 2017, at 277 – 285.

⁴⁵ 2020 MSGP, Condition B.17.A.2.a.1, at 38.

does not include that program's details or procedures in the previously submitted SWPPP,⁴⁶ as required by the permit conditions.⁴⁷ The DEP did not require Rockwool to include a full Preventative Maintenance Program in the SWPPP, and this omission prevents the DEP from evaluating the sufficiency of the planned preventative maintenance and prevents enforcement of the Preventative Maintenance Program. The DEP's failure to require a full Preventative Maintenance Program as part of Rockwool's SWPPP is arbitrary, capricious, and an abuse of the DEP's discretion.

- n. 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 does 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's failure to require a sedimentation and erosion control plan as part of Rockwool's SWPPP is arbitrary, capricious, and an abuse of the agency's discretion.

Whether failing to require a new SWPPP submittal with the 2020 MSGP registration application or accepting the deficient SWPPP from the 2019 MSGP, the DEP's approval of the 2020 MSGP registration without requiring an adequate SWPPP was arbitrary, capricious, and an abuse of its discretion.

42. The DEP approved Rockwool's registration notwithstanding that Rockwool's Groundwater Protection Plan (hereinafter, "GPP") does not fulfill the statutory or permit requirements.

⁴⁶ See Rockwool's SWPPP for the 2019 MSGP, dated Oct. 13, 2020, Section 5.3.3, at 19-20.

⁴⁷ 2020 MSGP, Condition B.17.A.2.a.3, at 39.

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" as required by 2020 MSGP Condition B.17.C.1.a.⁴⁸ This includes, but is not limited to, Rockwool failing to identify all outside material storage areas or bulk storage or distribution areas. Rockwool also 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 of the 2020 MSGP registration. These omissions made it impossible for the DEP to adequately evaluate the Groundwater Protection Plan for efficacy, or for the public to do the same. The DEP's failure to require Rockwool to fully inventory operations expected to contaminate the groundwater as part of the GPP is arbitrary, capricious, and an abuse of discretion.

43. 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" as the 2020 MSGP requires.⁴⁹ Rockwool also failed to identify all potential sources of groundwater contamination. As such, the GPP lacks sufficient detail to allow for appropriate evaluation of protection measures or to allow for 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."⁵⁰ The DEP

⁴⁸ *Id.*, Condition B.17.C.1.a, at 42.

⁴⁹ *Id.*

⁵⁰ See Rockwool's GPP dated Oct. 13, 2020, at 19. Rockwool submitted the same GPP for the 2020 MSGP as the one they submitted for the 2019 MSGP.

failed to require Rockwool to correct these deficiencies in the GPP before approving the permit, and such failure was arbitrary, capricious, and an abuse of the DEP's discretion.

44. The DEP did not require Rockwool to provide all necessary information regarding the underground pipelines at its site in its GPP. Therefore, 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. More specifically, upon information and belief, Rockwool failed to catalog all underground pipelines that may reasonably pose a risk to the groundwater, and they likewise failed to fully and accurately described the materials being carried in the underground pipelines.⁵¹ Rockwool's GPP also fails to provide a thorough and detailed description of procedures designed to protect groundwater from contamination carried in underground pipelines as required by the West Virginia Code of State Rules and the terms of the 2020 MSGP.⁵² The DEP did not require these significant omissions in the GPP to be addressed prior to the approval of the permit registration, and that failure was arbitrary, capricious, and an abuse of the DEP's discretion.

45. The DEP approved the 2020 MSGP registration, 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 statute⁵³ and the general permit conditions⁵⁴. In Rockwool's application for registration under the 2019 MSGP, upon

⁵¹ Upon information and belief, Rockwool has underground stormwater conveyances from the Melt for Reuse Area, truck washing area, and the raw material storage and handling area. This water is contaminated with pollutants from those areas and is conveyed to the reuse pond not discharged. No discussion of these pipelines and their potential for polluting the ground water if they fail, which is very possible due to the karst topography in the area. See Roxul USA, Inc., "*Reissue NPDES/State Storm Water Construction*" (Registration No. WVR108876), dated June 21, 2019 and issued on Feb. 25, 2020, attachment, "*Final Drainage Areas with Flow Lines.pdf*" at 9, 11, and 15.

⁵² See W.Va. C.S.R. § 47-58-4.11 and 2020 MSGP Condition B.17.C.1.a, at 42, respectively.

⁵³ W. Va. C.S.R. § 47-58-4.11.d.

⁵⁴ 2020 MSGP, Condition B.17.C.1.d, at 42.

information and belief, the DEP requested that Rockwool provide this thorough and detailed summary. Rockwool failed to add information or detail on the activities carried out under other regulatory programs and made no changes to address this failure in the submission for the current application. In the form used in the current application Section IX requires the applicant to provide a list of its environmental permits. Rockwool failed to provide a true accurate or complete list including only its previous registration under the 2019 MSGP. Further, Rockwool omitted consideration of the process materials and waste stored and processed under a difference permit on the Melt for Reuse area in the GPP. These omissions and lack of detail in description make it impossible to adequately evaluate the GPP for efficacy, and the DEP's approval of the 2020 MSGP registration without requiring Rockwool to correct these omissions is arbitrary, capricious, and an abuse of the DEP's discretion.

46. The DEP failed to require Rockwool to supply information about effluent characteristics, including toxics pollutants and total phenols, present in its stormwater, as required in its application instructions and by statute.⁵⁵ Rockwool failed to answer the application question concerning intake effluent characteristics, leaving it out of the application. 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 and contaminate the groundwater. For example, it is known from the air permit that lead is a component of the air emissions from the plant⁵⁶ and, therefore, may be entrained in the stormwater. The DEP evaluation and approval of Rockwool's incomplete registration application is arbitrary, capricious, and an abuse of the agency's discretion.

⁵⁵ W. Va. C.S.R. § 47-10-4.4.b.7.

⁵⁶ See Roxul USA, Inc. Air Permit to Construct (No. R14-0037) *Preliminary Determination-Fact Sheet*, at 16, 39, and 55.

47. The DEP failed to require Rockwool to appropriately, "address the issues arising from locating in the areas of a potentially more vulnerable groundwater resource," as required by statute⁵⁷. The DEP did not require Rockwool 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 extremely sensitive to contamination including karst, faults, subsidence, and wetlands. Upon information and belief, these features are known to be present within the site, yet these features are not all depicted on the Site Map, nor are they appropriately addressed in the narrative of the SWPPP. As such, Rockwool failed to appropriately address this requirement in its application for registration. Despite this identified failure, the DEP issued Rockwool's registration, and in doing so acted arbitrarily, capriciously, and abused its discretion.

48. The DEP issued a registration to Rockwool, without ensuring that the Rockwool stormwater design was appropriate for karst hydrogeology, as required by statute⁵⁸. Rockwool's stormwater handling system and its identified Best Management Practices (hereinafter, "BMPs") are not designed in accordance with the DEP guidance documents on stormwater design in karst areas or karst areas in the Chesapeake Bay watershed.⁵⁹ 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

⁵⁷ W. Va. C.S.R. § 47-58-4.10.

⁵⁸ *Id.*

⁵⁹ See CSN Technical Bulletin No. 1, *Stormwater Design Guidelines for Karst Terrain in The Chesapeake Bay Watershed*, Version 2.0; see also, W. Va. DEP, *WV Stormwater Management and Design Guidance Manual*, November 2012, Appendix C.

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 average⁶⁰) that will discharge via Outlet 001 is likely to develop a sink hole. Based on the sinkhole map Rockwool submitted as part of this application, that area of the site has already developed several sinkholes. As an additional example, the large wet ponds that drain 7 to 35 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.⁶¹ This error represents an arbitrary and capricious abuse of discretion by the DEP.

49. 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 that become entrained in the stormwater at its site. These air pollutants will fallout on all surfaces - roofs, parking lots, ponds, grass, etc. – and will become entrained in the stormwater as it washes over these surfaces across 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 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

⁶⁰ This value is taken from Rockwool's original 2019 MSGP application.

⁶¹ See CSN Technical Bulletin No. 1, *Stormwater Design Guidelines for Karst Terrain in The Chesapeake Bay Watershed*, Version 2.0, at 16-17

insufficient to prevent significant ground water contamination. Both the DEP and Rockwool failed to analyze the risks of the impact of these entrained air pollutants on the ground water quality. By not requiring Rockwool to address the impact of air emission that fall to the ground, DEP acted arbitrarily, capriciously, and abuse of its discretion.

50. The DEP failure to require Rockwool to develop a stringent mandatory Groundwater Monitoring Plan is arbitrary, capricious, and an 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 ability⁶² 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 These changes were seen on site maps submitted in Rockwool's Construction Stormwater General Permit registration application submitted on February 6, 2020⁶³ and Rockwool's Construction Stormwater General Permit registration modification application on submitted on November 20, 2020⁶⁴. These changes were omitted from the SWPPP and GPP submitted earlier as part of its 2019 MSGP registration application on October 13, 2020. The October 13, 2020, GPP was submitted as part of the November 19, 2021, application. industrial processes. Further, Rockwool did not describe in the GPP how the well heads of the monitoring wells would be protected. The DEP did not require this error to be corrected following addition of the groundwater monitoring program.

51. 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

⁶² See W. Va. C.S.R. § 47-58-4.9.c.

⁶³ See Roxul USA, Inc., *Application to "Modify NPDES/State Storm Water Construction" for the Ran 5 Project* (Registration No. WVR108876) under Construction Stormwater General Permit (Permit Id. No. WV0115924), at application attachment "*Final Drainage Areas with Flow Lines.pdf*".

⁶⁴ See *Id.*, at application attachment "*STABILIZATION PROGRESS MAP (11-19-20).pdf*".

requested by the DEP on several occasions. One example is the Topographical Map. Despite being asked specifically by the DEP, 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 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, and in doing so acted arbitrarily, capriciously, and abused its discretion.

52. The DEP approved Rockwool's registration notwithstanding that Rockwool failed to inform the DEP, and to appropriately change its application materials, to reflect major changes Rockwool made in its stormwater handling and operations that may affect stormwater pollution. Upon information and belief, the changes are reflected in responses to agency comments on Rockwool's Construction Stormwater General Permit registration application on February 6, 2020. These changes were omitted from the SWPPP and GPP submitted earlier as part of its 2019 MSGP registration application on October 13, 2020. One specific example includes the addition of an entirely new storm water outlet and material handling areas outside the stormwater handling system. The DEP failed to require Rockwool to modify its registration application to reflect these important changes, and therefore, acted arbitrarily, capriciously, and abused its discretion.

53. The DEP failed to comply with statutes and regulations that require that when, as here, a company makes significant changes to its permit materials and plans the DEP "shall" reopen the public comment period.⁶⁵ At the direction of the DEP, Rockwool significantly revised several

⁶⁵ W. Va. C.S.R. § 47-10-12.4.

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 did not have the authority to ignore this requirement, and failure to do so is arbitrary, capricious, and an abuse of its discretion.

54. The DEP failed to require Rockwool to provide outlet location information. Section XIII of the I Form application in the ESS pertains to outlet location, and requires the number of outlets, each outlet's longitude and latitude, the River Mile Point, and the name of the immediate receiving water be provided. Upon information and belief, this section was omitted from the ESS application. The DEP approved Rockwool's registration despite the absence of this information. This failure is arbitrary, capricious and an abuse of discretion by the DEP.

55. The DEP failed to require Rockwool to provide information about "Potential Discharges not Covered by Analysis" in the application. Section XVIII requires information regarding Potential Discharges not Covered by Analysis. Upon information and belief, Rockwool failed to answer these questions leaving them completely blank. The DEP approved Rockwool's Registration despite the absence of this information. This failure is arbitrary, capricious and an abuse of discretion by the DEP.

56. The DEP failed to require Rockwool to provide sampling and analysis information in the application. Section XX of the I Form application in the ESS pertains to sampling and analysis information. The first question in the section requires applicants to give the "Sampling Method: Briefly describe procedure followed including type of equipment or collection apparatus used." Upon information and belief, Rockwool simply answered N/A, but this information is clearly

applicable to Rockwool's stormwater monitoring as required by the MSGP. Also, the fourth question asks applicants to "describe method used during analysis." Again, Rockwool simply answered N/A despite this clearly applying to the sampling required by the MSGP.⁶⁶ The DEP approved Rockwool's Registration despite the absence of this information in the application. This failure is arbitrary, capricious and an abuse of discretion by the DEP.

57. The DEP acted arbitrarily, capriciously, and abused its discretion in this situation when it approved Rockwool's registration under the 2020 MSGP, 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 registration was improperly approved.

IV. Relief Requested

Appellants seek the following relief:

58. 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.

59. 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 Objections that the EQB determines was

⁶⁶ See 2020 MSGP, Section A.

inappropriately accepted by the DEP. This process would include another period of public comment and review.

60. More specifically, the appellants seek the relief outlined in Exhibit B.

**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. _____

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

Appellee.

EXHIBIT D - MOTION FOR STAY

AND NOW, Jefferson County Foundation, Inc., Christine L. Wimer, Karen Michelle Freer, and Gavin Perry (together, "Appellants"), by and through their undersigned counsel, file this Motion for Stay seeking relief in the form of a stay of certain terms and conditions of General Permit Registration No. WVG611896 (the "Registration") issued on November 23, 2021 by Katheryn Emery, Acting Director of the Division of Water and Waste Management of the West Virginia Department of Environmental Protection ("DEP"), allowing Roxul USA, Inc. ("Rockwool") to operate under General Permit No. WV0111457. This Motion for Stay is being filed concurrently with the filing of a Notice of Appeal, wherein Appellants respectfully represent that they have been aggrieved by the issuance of the Registration. Pursuant to West Virginia Code § 22B-1-7(d) and W. Va. Code R. § 46-4-5.5, Appellants hereby respectfully request the West Virginia Environmental Quality Board ("Board") stay the specific condition of the Registration permitting Rockwool to discharge sewage and/or industrial with its stormwater

discharges. The Appellants will suffer unjust hardship should this condition of the Registration remain in effect. In support, Appellants state as follows:

BACKGROUND

1. The Appellants timely appealed the Registration, which was filed with this Board by Unites States Mail on December 23, 2021 (the “Appeal”).

2. The Appellants timely file this Motion for Stay, as it is being filed concurrently with the Notice of Appeal.

3. Jefferson County Foundation (hereinafter, “JCF”) is a West Virginia based nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code, formed for the purpose of supporting and promoting effective and accountable government, sustainable development, and the protection of health, heritage, and the environment in the Eastern Panhandle of West Virginia. JCF’s purpose includes protecting the waters of Jefferson County and preventing the contamination of the groundwater and waterways that flow into the Potomac River and Chesapeake Bay. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438

4. 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.

5. Dr. Christine L. Wimer owns real property in Jefferson County, West Virginia, where her property value and groundwater resource will be impacted by nearby adverse impacts to groundwater. Dr. Wimer's property is less than four (4) miles from the Rockwool site, which is the subject of the Registration, and she has a drinking water well that will be impacted by the

pollution authorized under this general permit registration. Appellant Wimer also keeps horses on her property, and a contamination of her drinking water wells would make keeping horses on their land infeasible, thereby harming the use and enjoyment of her land.

6. Ms. Karen Michelle Freer owns real property in Jefferson County, West Virginia, where her property value and groundwater resource may be impacted by nearby adverse impacts to groundwater. Ms. Freer's property is less than one (1) mile from the Rockwool site, which is the subject of the Registration, and she has a drinking water well that will be impacted by the pollution authorized under this general permit registration. Appellant Freer also keeps horses on her property as a business enterprise, and a contamination of her drinking water wells would make keeping horses on their land infeasible, thereby harming her business and the use and enjoyment of her land.

7. Mr. Gavin Perry owns real property in Jefferson County, West Virginia, where his property value and groundwater resource may be impacted by nearby adverse impacts to groundwater. Mr. Perry's property is less than one (1) mile from the Rockwool site, which is the subject of the Registration, and he has a drinking water well that will be impacted by the pollution authorized under this general permit registration.

ARGUMENT

8. Pursuant to West Virginia Code § 22B-1-7(d), if this Board finds that “an unjust hardship to the appellant will result from the execution or implementation of a chief's or secretary's order, permit or official action pending determination of the appeal, the appropriate chief, the secretary or the board, as the case may be, may grant a stay or suspension of the order, permit or official action and fix its terms.”

9. When reviewing a Motion for Stay, this Board has adopted a four-part standard from the Supreme Court of West Virginia's decision in *Camden-Clark Memorial Hospital v. Turner*, 212 W. Va. 752, 575 S.E.2d 362 (2002), which is derived from the United States Court of Appeals for the 4th Circuit's analysis in *Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048 (4th Cir. 1985). This four-part standard calls for the showing: (1) that the party will likely prevail on the merits of the appeal, (2) that the party will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay. *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970).

10. The Appellants' Motion for Stay satisfies each of the four parts of this test.

11. First, Appellants will suffer irreparable injuries if the stay is denied. In the Appeal, the Appellants assert that the DEP unlawfully approved the Registration. The Registration was based on an application for it by Rockwool, in which Rockwool requested to "Allow sewage, industrial wastes or other wastes, or effluent therefrom, produced by or emanating from any point source, to flow into the waters of this State."¹ Sewage and industrial wastes are not permissible discharges under the 2020 Multi-Sector General Permit ("2020 MSGP"), as the 2020 MSGP only covers stormwater and ten (10) expressly allowable non-stormwater discharges detailed in Section B.2. of the permit,² none of which include industrial wastes or sewage. Upon information and belief, Rockwool began operating under an expired registration in violation of state and federal law, thereby discharging sewage and industrial wastes as stormwater releases to area ground and surface water. When sewage and other industrial wastes are released to ground and surface water, it is likely that these pollutants will

¹ Roxul USA, Inc., *Reissue NPDES Industrial #1 Permit Application (Permit Id. No. WVG611896)*, at 2.

² *2020 MSGP*, at 28.

contaminate not only the nearby waterways (such as the Potomac River) but also nearby drinking-water wells via the local karst topography. Due to the unique karst hydrogeology of the area, when sewage and other industrial wastes are released, these pollutants will enter the groundwater via direct or indirect infiltration. Due to the relatively rapid radial flow of the groundwater near the Rockwool location, these pollutants are likely to be carried to multiple surface springs into service streams which feed the Potomac River, affecting groundwater drinking water wells nearby.³ The Appellants, including Christine Wimer, Karen Michelle Freer, and Gavin Perry all use water wells on their properties for drinking. Appellants Wimer and Freer also keep horses on their properties, and contamination of their groundwater wells would make keeping horses on their land infeasible, thereby harming the use and enjoyment of their respective properties. Thus, the Appellants stand to be irreparably injured when their drinking water supplies are compromised or destroyed due to their proximity to the Rockwool site and its releases of sewage and industrial wastes with its stormwater. The Appellants also stand to become irreparably injured when they are sickened or physically harmed by Rockwool's discharges of sewage and industrial wastes which will likely contaminate Appellants' water wells. Sewage and industrial wastes contain some contaminants that cannot be eliminated from drinking water wells and remediation is not possible. Additionally, the Appellants will be irreparably injured from releases of sewage and industrial wastes because their property values will decrease due to groundwater contamination.

12. Second, the Appellants will likely prevail on the merits of the Appeal. The Appellants can easily show that the DEP unlawfully approved Rockwool's application for a 2020 MSGP registration. As noted above, Rockwool's application specifically stated it requested to

³ See Expert Witness Report, found at <https://www.jeffersoncountyfoundation.org/wp-content/uploads/2021/05/GROVES-REPORT.04-20-21.pdf>, last accessed December 22, 2021.

“Allow sewage, industrial wastes or other wastes, or effluent therefrom, produced by or emanating from any point source, to flow into the waters of this State.”⁴ Sewage and industrial wastes are not permissible discharges under the 2020 MSGP.⁵ The DEP’s permission of the discharge of sewage and industrial wastes despite lack of coverage for these discharges under the 2020 MSGP is a direct violation of the state’s mandate under 40 C.F.R. § 123.1(g)(1)⁶ as sewage and industrial wastes are point sources of pollution and not covered under stormwater general permits. The DEP does not have the authority to ignore federal regulation and the terms of the 2020 MSGP. By permitting the discharge of sewage and industrial waste not expressly allowed in the 2020 MSGP, the DEP acted arbitrarily, capriciously, and abused its discretion. Thus, on those facts alone, the Appellants can easily show that the DEP acted unlawfully in approving the Registration and that they will prevail on these points of their Appeal.

13. Third, neither the DEP nor Rockwool will be substantially harmed by the stay requested. The DEP does not stand to lose any authority to regulate or enforce laws should the condition in the Registration which currently permits Rockwool to discharge sewage and industrial waste with its stormwater be stayed. This stay would not limit, decrease, or shorten the DEP’s authority to enforce any sewage or industrial waste discharges (or any other authorities), as it can still evaluate, issue, and enforce National Pollutant Discharge Elimination System (“NPDES”) permits for sewage and industrial point sources. In no way is the DEP’s interests or authority harmed by this stay. Rockwool will also not substantially suffer from the

⁴ Roxul USA, Inc., *Reissue NPDES Industrial #1 Permit Application (Permit Id. No. WVG611896)*, at 2.
⁵ *2020 MSGP*, at 28.

⁶ This federal regulation provides, in part, that, “the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State’s jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA.” 40 C.F.R. § 123.1(g)(1).

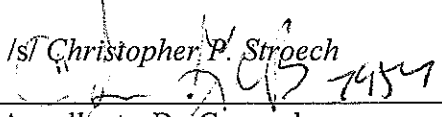
requested stay. While the stay would terminate Rockwool's ability to release sewage and industrial waste with its stormwater, it would not be substantially harmed because it has unjustly benefitted from the DEP's illegal approval of the Registration. The DEP's approval of Rockwool's request to release sewage and industrial wastes without applying for and operating under legal NPDES permits for its sewage and industrial waste point sources is illegal. Rockwool's unjust enrichment on the basis of the DEP's illegal, arbitrary and capricious approval of the Registration does not create a condition entitled to deference in considering the appropriateness of the stay. As such, it is not a harm to Rockwool to stay the condition in the Registration which was given without legal authority.

14. Lastly, the public's interest will be served in granting the stay requested. Appellants assert that placing a stay on the Registration approving Rockwool's discharging of sewage and industrial wastes with its stormwater is most certainly in the interest of the public. The discharging of sewage and industrial waste without the proper permits from the DEP and in contravention of the law pose significant health, welfare, and environmental integrity risks to the community in and around the Rockwool site. As noted above, the requested stay will reduce the risk of contamination to groundwater resources, including the communities' water wells, not just the Appellants' wells, thereby protecting the health of the public in proximity to Rockwool. The requested stay also serves public interest by protecting the environment and water recreation for future generations because it will reduce the threat of contamination to the Potomac River and groundwater which is near the Rockwool site.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Appellants respectfully assert that they have shown that all four parts of the standard for a stay are satisfied each and request that

the Board grant this Motion for Stay of the specific term and condition of the Registration permitting Rockwool to discharge sewage and/or industrial with its stormwater discharges.⁷

/s/ Christopher P. Stroeck

Appellants, By Counsel

Christopher P. Stroeck, Esq. (WVSB #9387)
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208 N. George Street
Charles Town, WV 25414
304-725-2002
304-725-0283 (Fax)
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⁷ Appellants realize that, given the unavoidable timing of this Notice of Appeal, the requisite hearing on the Motion for a Stay would likely occur on or about December 27th. Recognizing that this is a time when many are on leave for the holiday season, creating potential administrative burdens on the Environmental Quality Board and other parties to this appeal, Appellants – despite being very concerned about irreparable harm – are amenable to a short delay of the hearing on this Motion for a Stay until the first week of January 2022.

**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. _____

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

Appellee.

CERTIFICATE OF SERVICE

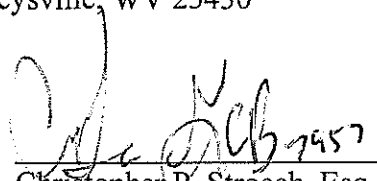
The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Appeal; Exhibit A – Action Appealed; Exhibit B – Relief Requested; Exhibit C – Specific Objections; Exhibit D - Motion for Stay; and a Proposed Order Granting the Motion for a Stay was served by Email PDF and First-Class U.S. Mail on the following:

Kenna M. DeRaimo, Clerk (overnight)
W. Va. Environmental Quality Board
601 57th Street SE
Charleston, West Virginia 25304

Charles S. Driver, Esq.
Office of Legal Services
W. Va. Dept. of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

Katheryn Emery, Acting Director
W. Va. Dept. of Environmental Protection
Division of Water & Waste Management
601 57th Street SE
Charleston, West Virginia 25304

Ken Cammarato
Vice President & General Counsel
Roxul USA, Inc.
665 Northport Ave.
Kearneysville, WV 25430



Christopher P. Stroeck, Esq.
Counsel for Appellants

December 20, 2021

Via First Class U.S. Mail and Email PDF (kenna.m.deraimo@wv.gov)

Ms. Kenna M. DeRaimo, Clerk
Environmental Quality Board
601 57th Street SE
Charleston, WV 25304

Re: Jefferson County Foundation, Inc., Christine L. Wimer, Karen Michelle Freer, and Gavin Perry v. Kathy Emery, Acting Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, Appeal No. _____

Dear Ms. DeRaimo:

Enclosed for filing are the original and five copies of the Application for Pro Hac Vice Admission of Michael A. Parker, Esq. in the above-referenced appeal.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

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

Enclosure: Application for Pro Hac Vice Admission of Michael A. Parker, Esq.

cc: Kathy Emery, WV Department of Environmental Protection

**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.

APPLICATION FOR PRO HAC VICE ADMISSION OF MICHAEL A. PARKER, ESQ.

Christopher P. Stroeck, Esq., Michael A. Parker, Esq., and the law firm of Arnold & Bailey, PLLC, hereby submit this verified Application for Pro Hac Vice Admission of Michael A. Parker, Esq. pursuant to Rule 8 of the West Virginia Rules for Admission to Practice. The applicant states as follows:

1. The above-referenced appeal is the subject of this Application;
2. That Michael A. Parker, Esq. is licensed to practice law in the following

jurisdiction:

Commonwealth of Pennsylvania Bar, No. 90979
601 Commonwealth Avenue, Suite 2700
P.O. Box 62485
Harrisburg, PA 17106-2485

3. That local counsel will be as follows:

Christopher P. Stroeck, Esq. (WVSB #9387)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414

304-725-2002
304-725-0283 (Fax)
estroeche@arnoldandbailey.com

4. That the following are all West Virginia matters in which Mr. Parker and/or his firm has been involved with in the preceding twenty-four months:

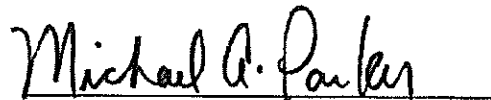
Appeal No. 21-07-EQB, in the West Virginia Environmental Quality Board

5. That Mr. Parker hereby represents that he is a member in good standing in all the jurisdictions as set forth herein above and that he has not been disciplined in any jurisdiction within the preceding twenty-four months;

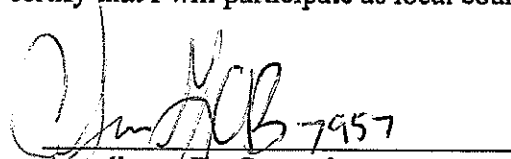
6. That Mr. Parker agrees to abide by all laws, rules and regulations of West Virginia;

7. That a non-refundable fee of \$350.00 has been paid to the West Virginia State Bar by mailing a check to the State Bar on this date.

I, Michael A. Parker, Esq., do hereby verify the statements made herein.


Michael A. Parker, Esq.

I, Christopher P. Stroeck, Esq., do hereby certify that I will participate as local counsel in this matter.


Appellants, By Counsel

/s/Christopher P. Stroeck
Christopher P. Stroeck, Esq. (WVSB #9387)
Arnold & Bailey, PLLC
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**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC.,
CHRISTINE L. WIMER, KAREN MICHELLE FREER,
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Appellee.

CERTIFICATE OF SERVICE

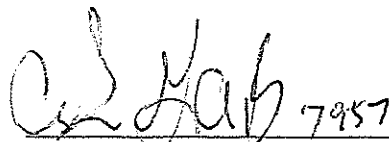
The undersigned hereby certifies that a true and correct copy of the foregoing Application for Admission Pro Hac Vice was served by Email PDF and First-Class U.S. Mail on the following:

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Vice President & General Counsel
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665 Northport Ave.
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Christopher P. Stroeck, Esq.
Counsel for Appellants

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

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KATHERYN EMERY, ACTING DIRECTOR,
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Appellee.

ORDER GRANTING MOTION FOR STAY

Upon consideration of Appellants' Motion for Stay and the arguments and briefs of the parties related thereto, the Motion is hereby GRANTED and the specific term and condition of Rockwool's 2020 MSGP Registration approved by the DEP on November 23, 2021 permitting the discharge sewage and/or industrial with its stormwater discharges is hereby STAYED.

It is so ORDERED and ENTERED this ___ day of _____, 2022

ENVIRONMENTAL QUALITY BOARD