

**West Virginia Environmental Quality Board
Charleston, West Virginia**

Jefferson County Foundation, Inc., et al.,

Appellants,

v.

Appeal No. 20-13-EQB

**Kathy Emery, Director,
Division of Water and Waste Management,
West Virginia Department of Environmental
Protection,**

Appellee,

and

Roxul USA, Inc., d/b/a ROCKWOOL,

Intervenor-Appellee.

ORDER

On a prior day, Intervenor-Appellee Roxul USA, Inc. d/b/a ROCKWOOL and Appellants Jefferson County Foundation, Inc., et al. filed a Joint Motion for Dismissal the above-captioned appeal, stating that they had reached a settlement contingent upon entry of an Order incorporating certain actions that ROCKWOOL has agreed to take pursuant to the parties' settlement (the "Stormwater Handling and Control Actions"), as more fully described in an exhibit to the Joint Motion for Dismissal, and dismissing the above-captioned appeal, with prejudice. Having considered the Joint Motion and the arguments set forth therein, it is hereby **ORDERED** that:

1. The Joint Motion for Dismissal is **GRANTED**;
2. The Stormwater Handling and Control Actions set forth in the attached **Exhibit 1** are incorporated by reference as if set forth fully herein and shall be binding and enforceable against ROCKWOOL as an Order of this Board; and

3. This matter is **DISMISSED** with prejudice and shall be removed from the active docket.

It is so **ORDERED** and **ENTERED** this 21ST day of FEBRUARY 2023.

West Virginia Environmental Quality Board

Kenna M. Raino
for Dr. Edward Snyder, Chairman

Prepared by:



Joseph V. Schaeffer (WV Bar No. 12088)
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Reviewed and approved by:



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*SUS
7 Feb 2023*

EXHIBIT 1
(Stormwater Handling and Control Actions)

EXHIBIT 1

ROCKWOOL agrees to take the following actions:

1. No later than sixty (60) calendar days from the effective date of this Agreement, ROCKWOOL shall select and retain a qualified contractor to perform the following work ("Work"), to be commenced as soon as practicable:

- a. Enlarge B170 (a/k/a the melt-for-reuse area) to its originally designed size as shown in Figure 3 to its SWPPP;
- b. Increase the height of the existing curb along the western entrance of B170 to one (1) foot, such that stormwater from B170 cannot flow out of B170 other than through the intended drain;
- c. Regrade approximately 0.97 acres bordering the southeastern corner of the finished-goods parking lot and install an additional stormwater inlet connected to the Stormwater Management Pond;
- d. Install piping along the warehouse building, known by its internal designation as "B900," to increase stormwater carrying capacity to the Stormwater Management Pond;
- e. Install piping along the packaging building, known by its internal designation as "B500," to increase stormwater carrying capacity to the Stormwater Management Pond;
- f. Over-excavate the channels at Outfalls 001 and 002 to accommodate the new impervious barrier referenced below and change the side-slope grading from 2H:1V to 3H:1V;
- g. Install an impervious barrier from the pipe outlets until the level spreaders at each outlet, including the channels and aprons (to flare from 16 feet wide at the end of the channel to 24 feet wide at the level spreader), with such impervious barrier to consist of a geotextile, a synthetic liner (either 60 mil HDPE or 30 mil PVC), and a 4" concrete mattress using Fabri-Form or a comparable product;
- h. Install riprap of appropriate size (based on a 25-year 24-hour storm peak flow rate), starting at the end of the channels, over the length and width of the aprons and ending at the level spreader; and
- i. Retain the existing level spreaders, *provided*, however, that at Outfall 001 the channel will be realigned so that the channel flows directly from the pipe outlet to the level spreader, eliminating the current turn, and further allowing for any potential realignment of the channel at Outfall 002 due to topography.

ROCKWOOL shall cause the Work to be completed within one (1) year of its commencement. Upon completion of each individual component of the Work set forth in subparagraphs (a)-(i), above, ROCKWOOL shall send a letter to WVDEP, with copy to Appellants, confirming the same.

2. No later than sixty (60) calendar days from the effective date of this Agreement, ROCKWOOL will submit to DEP, with copy to Appellants, as-built drawings with one (1)-foot

topographic contours of the Roxul USA, Inc. property within the limits of disturbance created from surveys performed post-construction and post-final grading conducted by a professional surveyor licensed in the state of West Virginia ("As-Builts") that accurately reflect current site conditions.

3. No later than sixty (60) calendar days from the completion of the Work, ROCKWOOL will select and retain an independent professional engineer, with experience with similar projects located in karst terrain and licensed in the State of West Virginia, to prepare a written report ("Report") reviewing the following areas' ("Study Areas") drainage patterns shown on Figure 3 to its SWPPP ("Figure 3") for consistency with the drainage patterns shown on the As-Builts:

- a. B170 (a/k/a the melt-for-reuse area);
- b. The grass area between the Rainwater Reuse Pond (n/k/a "Rainwater Collection Basin (No Outlet)") and the adjacent delivery road;
- c. The grass area around the forebay to the Rainwater Reuse Pond; and
- d. The grass area between the Stormwater Management Pond and the adjacent delivery road.

The engineer shall complete the Report no later than one-hundred-and-twenty (120) days from his or her retention.

4. ROCKWOOL shall submit the engineer's Report, including any recommendations, to DEP, with copy to Appellants, no later than fifteen (15) calendar days from its receipt. DEP and Appellants may, within thirty (30) calendar days of the Report's receipt, submit any comments to ROCKWOOL for its consideration.

5. No later than sixty (60) calendar days from its receipt of any comments to the Report by DEP and Appellants, ROCKWOOL shall, in accordance with good engineering practice and subject to any required approval by DEP, undertake such remedial measures reasonably necessary to ensure that drainage patterns for the Study Areas shown on the As-Builts are consistent with the drainage patterns for the Study Areas shown in Figure 3; *provided, however*, if the Report concludes that the drainage patterns for the Study Areas shown on the As-Builts are consistent with the drainage patterns for the Study Areas shown on Figure 3, ROCKWOOL may, but is not obligated to, take any, all, or no actions as it determines in its sole discretion.

6. No later than sixty (60) days after the effective date of this Agreement, and annually thereafter, ROCKWOOL shall select and retain a qualified contractor to perform an electrical leak location survey of the geomembranes installed in the Stormwater Management Pond and Rainwater Reuse Pond. Within sixty (60) days of completion of each electrical leak location survey, ROCKWOOL shall provide to the DEP a written report, with copy to Appellants, summarizing the results of the electrical leak location survey. Any leaks identified by the survey shall be repaired according to generally accepted industry standards. This leak detection protocol and repair protocol shall be incorporated into the SWPPP and GPP, as appropriate, within ninety (90) days of the effective date of this Agreement.

7. No later than sixty (60) days after the effective date of this Agreement, and annually thereafter, ROCKWOOL shall select and retain a qualified contractor to perform camera inspections of the piping network carrying stormwater to the Rainwater Reuse Pond; *provided*, however, that no camera inspections shall be required of parts of the piping network that are inaccessible using industry-standard equipment. Within sixty (60) days of completion of each camera inspection, ROCKWOOL shall provide to the DEP a written report, with copy to Appellants, including images, summarizing the results of the camera inspection. If the camera inspection identifies leaks or defects in the piping network, ROCKWOOL shall, subject to any required approval by DEP, either replace or line the damaged or leaking pipes, If pipes are replaced, they shall be replaced with pipes using water-tight seals. This camera inspection protocol shall be incorporated into the SWPP and GPP, as appropriate, within ninety (90) days of the effective date of this Agreement.

8. No later than sixty (60) days after the effective date of this Agreement, ROCKWOOL shall develop a contingency overflow-prevention plan, to be incorporated into the SWPPP, should the water level in the Rainwater Reuse Pond reach one (1) foot from the freeboard. The plan shall include, at minimum, the following:

- a. Identification of three (3) providers of water storage tanks capable of removing and storing stormwater from the Rainwater Reuse Pond during a 100-year storm event;
- b. Defined criteria triggering implementation of the plan; and
- c. Defined criteria under which stormwater removed and stored in any water storage tanks would be reintroduced to the Rainwater Reuse Pond (No Outlet) for use in facility operations.

9. No later than sixty (60) days after the effective date of this Agreement, ROCKWOOL shall adopt and implement a practice of performing visual inspections of Outfalls 001 and 002 following each storm in excess of the 10-year storm and, to the extent that such inspections identify the need for repairs, causing such repairs as are reasonably necessary to be commenced and completed as soon as practicable.

10. No later than sixty (60) days after the effective date of this Agreement, ROCKWOOL shall maintain the height of stockpile and other materials stored at B170 at or below the heights authorized in Permit No. R14-0037, Permit to Construct, issued by DEP under the West Virginia Air Pollution Control Act, W. Va. Code § 22-5-1 *et seq.*, on or about April 30, 2018.

11. At the effective date of this agreement Rockwool shall adopt and implement a procedure for the clean out of the forebay of the Rainwater Reuse Pond such that the entire procedure is performed on and contained on the hard surface and that any spillage is contained on the hard surface and runs back into the Rainwater Reuse Pond.

12. All changes made to the RAN-5 facility pursuant to this Agreement shall be incorporated into the GPP and SWPPP.

13. Any deadlines under this Exhibit A shall be stayed during the existence of any condition of force majeure that is reasonably beyond ROCKWOOL's ability to anticipate or control and that prevents ROCKWOOL's performance, with such force majeure conditions to include, but not be limited to, lightning strike, earthquake, flood, unusually severe rain, ice, or snow storm, hurricane, tornado, pandemic or other public health emergency, other catastrophic act of nature, riot, war, labor disputes, unavailability of labor at prevailing wages, supply-chain disruptions, environmental restrictions, or governmental, administrative, or judicial orders.

**ENVIRONMENTAL QUALITY BOARD
WEST VIRGINIA**

NOTICE OF RIGHT TO APPEAL FINAL ORDER

In accordance with §22B-1-7(j) of the *West Virginia Code*, you are hereby notified of your right to judicial review of this FINAL ORDER in accordance with §22B-1-9(a) and §22B-3-3 of the *West Virginia Code*. If appropriate, an appeal of this final order may be made by filing a petition in the appropriate court within thirty (30) days from your receipt of this final order in the manner provided by §29A-5-4 of the *West Virginia Code*.

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

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

Appellants,

v.

Appeal No. 20-13-EQB

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

Appellee,

and

ROXUL USA, INC., d/b/a ROCKWOOL,

Intervenor-Appellee.

CERTIFICATE OF SERVICE

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, have this day, the 21ST day of February, 2023 served a true copy of the foregoing **ORDER** upon the following:

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Via Interdepartmental Mail


Kenna M. DeRaimo, Clerk

received

2-23-23



SCANNED

2-23-23