

Final Order, Requirement and Decision

To: Appalachian Materials, Inc.
c/o Poyner Spruill, LLP, Attorneys for Appalachian Materials, Inc.,
Chad W. Essick, Attorney
Keith H Johnson, Attorney

Background

The County Watershed Protection Ordinance (WPO) was adopted in 1993 to promote public health, safety and general welfare of Ashe County citizens. Under the WPO, no activity, situation, structure or land use within the watershed that poses a threat to water quality and public health, safety and welfare shall be allowed.

In June 2015, Appalachian Materials, Inc. (AM) filed an application requesting Ashe County Planning Staff (collectively the Building Inspector and Watershed Administrator) to issue a watershed permit in connection with proposed future non-residential development activities, namely a proposed asphalt plant, on the parcel of land designated in Ashe County Tax Records as the parcel with property identification number 12342-016 (Lot). The WPO protects this Lot and the surface water associated with this Lot, as well as property at lower and higher elevations that receive or could receive surface water from the Lot directly or indirectly.

In the fall of June 2015, the Planning Staff received from multiple sources other than from AM, the record owner of the Lot, Radford Properties, Inc. (RP) and the operator of an existing quarry Radford Quarries of Boone, Inc. (RQ) located on the Lot, that : **(1)** AM, RP and RQ are all related entities, controlled by D.J. Cecile and his family (Cecile); **(2)** multiple land disturbing activities have been conducted on the Lot since 2006 by Cecile through one or more of Cecile's corporate entities without any WPO permits; **(3)** in the first half of 2015, Cecile through one or more of Cecile's corporate entities committed a land disturbing activity on the Lot by grading and terracing 3.5 to 3.6 acres on the Lot (*Grading*) and neither Cecile nor any Cecile-controlled corporate entities applied for a WPO permit, requested an interpretation of a WPO or even reported the *Grading* to Planning Staff before committing the *Grading*; **(4)** in September 2015, Planning Staff reported the information it had received from third parties regarding the *Grading* to Blue Ridge Environmental Consultants, Inc. (BREC) and Derek S. Goddard, a principal of BREC (Goddard); **(5)** BREC and Goddard had been engaged to provide environmental permitting services to RQ since 2006 , prepared AM's Polluting Industries Development Ordinance permit application and AM's WPO permit application and Goddard/BREC submitted these applications to Planning Staff in June 2015 (AM's Applications); **(6)** the *Grading* was in the same location as shown to be a proposed possible future asphalt plant on AM Applications; **(7)** BREC, Goddard, Cecile, AM, RP, and RQ provided no response or additional information to

the Planning Staff regarding *Grading* until after the Planning Director issued his denial of AM's PIDO permit and only when Cecile and Goddard provided self-serving testimony during AM's appeal hearing in October 2016, over a year after the Planning Staff informed BREC, Goddard, Cecile and AM of the *Grading*; **(8)** no order, requirement, decision or determination has been made by the Watershed Administrator under the WPO in 2015 or 2016 in connection with multiple situations, activities, structures, and land uses existing and proposed on the Lot or AM's application for a watershed permit; **(9)** despite the Watershed Administrator not having made any order, requirement, decision or determination under the WPO regarding the Lot or AM's watershed permit application, the Planning Board made the findings that the WPO permit was a local permit issued by Ashe County under a County ordinance, and the *Grading* was committed by RQ, AM's parent company as part of RQ's pre-existing mining operations on the Lot; **(10)** AM, Cecile nor any of Cecile's controlled corporate entities have disputed or appealed these findings; **(11)** the Planning Staff lacks information, independent of Goddard's and Cecile's testimony or documents created by Goddard or Cecile after commission of the *Grading*, to verify which Cecile controlled corporate entity committed the *Grading* and for what purpose; and **(12)** the Planning Staff lacks sufficient information to determine whether the multiple activities, situations, structures or land uses existing and proposed to occur on the Lot satisfy the mandatory requirements of the County's WPO.

In order to process AM's pending Watershed Permit application, to investigate and understand the multiple over-lapping situations, activities, structures and/or land uses existing or proposed on the Lot and to investigate prior violations of the WPO that have occurred on the Lot, the Planning Staff prepared a set of Planning Staff Comments and sent them to AM through Poyner & Spruill, attorneys representing Cecile and Cecile controlled entities on January 24, 2017.

Since January 24 2017, AM has failed and refused to provide the Planning Staff the information requested by Planning Staff and has disagreed with the Planning Staff Comments. AM provided only the information it wanted to provide and otherwise engaged in argumentative and unproductive behavior.

On June 15, 2017, the County informed AM and Cecile that an impasse had been reached between the Planning Staff and AM and Cecile regarding the Planning Staff's authority to request information which AM and Cecile did not want to provide to Planning Staff. Unless AM and Cecile agreed to provide the information requested, the Planning Staff would make a final decision that it had authority to request the information requested since January 2017.

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The Planning Staff is charged with the duties of enforcing County Planning Laws, including the County's Watershed Protection Ordinance (WPO), codified in Chapter 155 of the Ashe County

Code of Ordinances. The County has a good faith basis to believe that violations of the WPO have occurred on the Lot and the persons responsible for these violations are Cecile and one or more of Cecile controlled entities. The Planning Staff has ample authority to investigate these matters completely and to make informed decisions regarding past violations of the WPO on the Lot. Requesting the information described in the Planning Staff Comments was authorized by County Law.

The Planning Staff is charged with the duties of implementing and applying the WPO to the Lot. The County has a good faith basis to believe that there are or will be multiple situations, activities, structures and/or land uses existing or proposed to occur on this single Lot, all carried out and directed by Cecile through one or more of Cecile controlled existing or new corporate entities. The Planning Staff has ample authority to implement and apply the WPO to the Lot completely and to make informed decisions regarding existing or proposed future situations, activities, structures and/or land uses on the Lot. Requesting the information described in the Planning Staff Comments is authorized by County Law.

The Planning Staff is charged with receiving multiple types of permit applications under the WPO, considering these applications and the Watershed Administrator is authorized to make orders, requirements, decisions or determinations under the WPO. The Planning Staff has received a single application for a WPO permit from AM. This application requests the Planning Staff to permit activities on the portion of the Lot where third party sources had reported violations of the WPO and overlapping situations, activities, structures and/or land uses exist or will exist. The Planning Staff is forbidden by law to process this application until all issues related to existing violations of County and State law on the Lot have been fully and unambiguously addressed and all County and State law has been fully satisfied and implemented on the Lot. Law authorizes requesting the information described in the Planning Staff Comments.

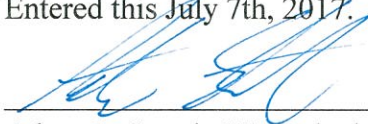
Accordingly, the application filed in June 2015 for issuance of a WPO permit to AM under the WPO will not be processed further until Cecile and Cecile controlled corporate entities completely, accurately and fairly provide the information requested in the Planning Staff Comments on January 24, 2017 to the County.

Nothing in this Final Order, Requirement and Decision limits the County from further investigating situations, activities, structures or land uses on the Lot or any other property protected by the WPO and conducting such enforcement actions of County law as may be necessary or appropriate.

Notice of Right to Appeal

AM and/or Cecile may appeal this Final Order, Requirement and Decision to the Watershed Review Board as provided in County Law, Section 155.66 within 30 (thirty) days of the date of the Final Order, Requirement and Decision. All appeals must be in writing stating the reasons for the appeal and addressed to the Watershed Review Board, c/o Adam S. Stumb, Watershed Administrator. Appeals should be delivered to the Watershed Review Board at 150 Government Circle, Suite 2400, Jefferson, N.C. 28640.

Entered this July 7th, 2017.



Adam L. Stumb, Watershed Administrator