IN THE MATTER OF	:	BEFORE THE
Chase Land, LLC f/k/a	:	HOWARD COUNTY
Chase Limited Partnership	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 95-58E

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DECISION AND ORDER

On January 29, March 19, March 21, and March 28, 2024, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Petition of Chase Land, LLC (Petitioner) for an extension of time for a Quarry Conditional Use, approved on April 24, 1997, in a M-1 (Manufacturing Light) Zoning District, known as 8420 Washington Boulevard, Jessup, Maryland (the Property), filed pursuant to Section 131.0.I.3.c of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Petitioner was represented by Sang Oh, Esq.. Randy Heckler, Edward Barnhouser, Collin Sumpter, Jim Lolcama, Joe Nawrocki, Patrick Hastings, Jr., Douglas Rudenko, David Uliana, Diane Cuyle, and Thomas Koch, testified in support of the Petition. Joseph Dowdell, Evelyn Austin, and Bradford Wicker,

practicing pursuant to Maryland Rule 19-220 under the supervision of Jon Mueller, Esq., University of Maryland School of Law Clinical Law Program, represented Pleasant Chase Homeowners Association et al, interested parties in Opposition, many of whom testified.

Petitioner submitted the following exhibits:

Ex. 1. Heckler CV

Ex. 2. Sumpter CV

Ex. 3. Lolcama CV

Ex. 4. Consent Order re discharge permit

Ex. 5. Aerial

Ex. 6. Plant emission controls

Ex. 7. Photos dust collector

Ex. 8. Sweeper trucks

Ex. 9. Complaints

Ex. 9a. Seismo locations

Ex. 10. Heckler-Edwards email

Ex. 11. Blast reports

Ex. 12. Inspection reports

Ex. 13. Blast background

Ex. 14. Dyno Nobel blasting duration letter

Ex. 15. Hastings CV

Ex. 16. Summary of damage claims

Ex. 17. Damage investigation reports

Ex. 18. Rudenko CV

Ex. 19. Uliana CV

Ex. 20. Damage photos

Ex. 21. Not admitted

Ex. 22. Cuyle CV

Ex. 23. Monitoring locations

Ex. 24. Koch report

Ex. 25. DOE letter re Savage renewal

Ex. 26. DOE violations

Ex. 27. EPA

Opposition submitted the following exhibits:

Ex. 1. Expired Clean Water Act Discharge Permit

Ex. 2.-Ex. 9. Damage Photos

Ex. 10. Articles of Incorporation

Ex. 11. Discharge violation

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The subject Property consists of approximately 350 acres of a 546.207 acre parcel of land bounding on the north side by US Route 1, the south side of I-95, the south and west side of Mission Road, and the east side of the CSX Railroad rail. It is located in the 3rd Councilmanic District, identified as Tax Map 43, Block 19, Parcel 234 and part of Parcel 235 and is also known as 8420 Washington Boulevard, Jessup, Maryland.

2. Conditional Use. On April 24, 1997, a Special Exception (now a Conditional Use) was approved to operate a Quarry on the subject property subject to 24 conditions. Condition 23 requires "The special exception granted herein shall be subject to renewal five years from the date of approval of the final site development plan for the project, and every five years thereafter, in accordance with Section 131.H.2 of the Zoning Regulations; except that the special exception shall terminate without right of renewal 25 years from the date on which all necessary excavation permits for the project have been obtained." The final Site Development Plan for this project was approved on March 15, 2004. The Howard County Hearing Examiner approved five-year extensions of the

Special Exception on February 20, 2009, and on February 10, 2014. On February 5, 2019, the Howard County Hearing Examiner granted a fourth request for a five-year extension of time for the Special Exception (now a Conditional Use) until February 5, 2024. By letter dated December 5, 2023, Petitioner has requested one last five-year extension for the Conditional Use of a Quarry on the subject property.

APPLICABLE LAW

1. **Sec. 131.0: - Conditional Uses**

H. Conditions of Approval

1. If the Conditional Use is approved, the Hearing Authority may attach conditions to the proposed use or plan as it deems necessary to ensure continuous conformance with all applicable standards and requirements. The Conditional Use plan, subject to such conditions, shall be made part of the decision and order of the Hearing Authority.

2. The Hearing Authority may place a time limit on a Conditional Use or may require renewal of the use after a certain time period as a condition of approval. On an application for renewal of a Conditional Use, the Hearing Authority shall determine whether the applicant has complied with the conditions and safeguards required by the Hearing Authority during the prior term. If the Hearing Authority finds that the applicant has been in substantial violation thereof, it shall deny the application for renewal. The Hearing Authority shall use the procedures given in Section 131.0.I.3.c.(1) through (3) below in considering requests for renewal.

3. The use, development or maintenance of a Conditional Use site in violation of the Conditional Use plan, or of any conditions imposed by the Hearing Authority, shall constitute a violation of these Regulations and shall be grounds for revocation of the Conditional Use.

I. Establishment of Conditional Use

3. Lapse of Decision Approving a Conditional Use

c. The Hearing Authority may grant as many as two extensions of the time limits given above. The extensions shall be for a period of time not to exceed three years each, and may be granted in accordance with the following procedures:

(1) A request for an extension shall be submitted by the property owner prior to the expiration of the Conditional Use approval, explaining in detail the steps that have been taken to establish the use.

(2) The property owner shall certify that a copy of the request for an extension has been sent by certified mail to adjoining property owners and to the addresses given in the official record of the Conditional Use case for all persons who testified at the public hearing on the petition.

(3) The Hearing Authority shall provide opportunity for oral argument on the request at a work session if requested by any person receiving notice of the request. If no response is received within 15 days of the date of the written notification, a decision on the request may be made by the Hearing Authority without hearing oral argument.

BURDEN OF PROOF

Petitioner's quarry is located in Howard County, Maryland. It is unlawful for anyone to use land, or construct any structures, in a way that violates regulations set forth in the Howard County Zoning Regulations (HCZR). § 102.0. The Zoning Regulations classify properties as belonging to one of several Zoning Districts, each of which allows certain activities to be conducted on properties within that District. *See id.* §§ 104.0-127.6 (describing each Zoning District). Petitioner is located in an

M-1 Zoning District, which only allows property to be used for light manufacturing uses; including "ambulance services," "recreation facilities," "retail centers," "restaurants," and "schools." *Id.* § 122.0.B. The M-1 Zoning District does not usually accommodate quarries. *Id.* However, Petitioner has been allowed to operate its Quarry legally for the last 20 years because the Howard County Board of Appeals approved a Decision and Order in 1997 that granted Petitioner a Special Exception (now called a Conditional Use) to operate a Quarry in the District. BA 95-58E (1997) at 42-46. The Board's grant of the Exception was conditioned upon Petitioner complying with all relevant laws and regulations because the Quarry has "characteristics or impacts that are not typical" for an M-1 Zoning District. HCZR § 131.0.A.

When Petitioner originally applied for the Conditional Use, it had to show, among other things, that its activities would not have adverse effects on environmentally sensitive areas or other properties from noise, dust, fumes, vibrations, or other physical conditions than would otherwise occur in an M-1 Zoning District. *Id.* §§ 131.0.G, B.3. In its 1997 Decision and Order granting the Petition, the Board of Appeals imposed 24 Conditions on Petitioner's Conditional Use in an attempt to keep Petitioner's activities from affecting existing residential homeowners. *Id.* §§ 131.0.H.1-2; BA 95-58E (1997) at 42-45. Condition 23 requires that Petitioner apply for renewal of the Conditional Use every five years. BA 95-58E (1997) at 45.

Petitioner has been operating for 20 years and is applying for its fifth and final five-year renewal of its Conditional Use. Past extensions do not require that a

renewal application be automatically granted. HCZR § 131.0.H.2. Instead, when considering whether to grant the renewal, the Hearing Examiner "*shall* determine whether the applicant has complied with the conditions and safeguards required by the Hearing Authority ...." and "*shall deny* the application for renewal" if the applicant has been in "substantial violation thereof .... " *Id.* (emphasis added). Any violations of the 24 Conditions imposed by the Board of Appeals are grounds for revocation of the Conditional Use. *Id.* § 131.0.H.3. Additionally, Zoning Regulations instruct that when deciding whether to approve a Conditional Use extension, the Hearing Examiner shall consider, among other things:

> [t]he reasonable needs of the entire community and particular neighborhoods . . . effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties... effect of such use upon the peaceful enjoyment of people in their homes... type and kind of structures in the vicinity where people are apt to gather in large numbers such as schools... effect of the proposed use or development on the natural environmental or landscape resources of the site and adjacent sites . . . .

Id. § 130.0.C. Petitioner has the burden of proof and persuasion to show by a preponderance of the evidence that it has complied with all of the terms of its Conditional Use during the preceding five-year renewal period. *Id.* § 131.0.G.

CONCLUSIONS OF LAW

1. **Opposition argues that Petitioner is in violation of four of its conditions of approval:**

Condition 13. The Petitioner shall establish and implement procedures for the investigation and reporting of vibration and damages attributable to the quarry operations on all homes within 1,000 feet of the quarry excavation area and the 12 Heritage Woods homes identified in the Petitioner's testimony.

Condition 17. Dust emissions will be controlled and maintained within the confines of the site in accordance with State regulations.

Condition 18. Blasting will occur no more than 10 seconds per month. No blasting will occur between the hours of 6:00 p.m. and 7:30 a.m. on any day.

Condition 24. The Petitioner shall comply with all applicable federal, State, and County laws and regulations.

Opposition also allege violations of various noise ordinances and of HCZR §122.0 for operating a Quarry without an approved Conditional Use.

A. Vibration Damage/Blasting

Condition 18 of Chase Land's Conditional Use requires "[b]lasting will occur no more than 10 seconds per month" [hereinafter "the 10-second rule"]. This rule was created by Joseph Nawrocki of Dyno Nobel at the request of Kingdon Gould, the original owner of Chase Land. Mr. Nawrocki testified that Mr. Gould asked him to estimate how long Savage Stone would have to blast each month to meet their expected rock production and generate their expected revenue. Mar. 19, 2024, at 4:20:51. According to Mr. Nawrocki, the 10-second rule only measures the time between the first hole and the last hole to fire in a blast. The total blast time might only last a few seconds on site at Savage Stone, but down range the vibrations of the earth may last much longer. Mar. 19, 2024, at 4:20:17. The 10-second rule was developed before rock production at the Quarry began and has not been changed since. Mar. 19, 2024, at 4:20:37. Mr. Nawrocki also testified in support of the Quarry during the 1997 Howard County Board of Appeals evidentiary hearing on BA 95-58E. Based on Mr. Nawrocki's testimony, there have been no changes in Savage Stone's operation between the 1997 hearing and the 2024 hearings, despite years of resident complaints.

Residents stated that the blasts from Savage Stone occur once or twice a week. Jan.29, 2024, at 3:49:03 and 4:48:30, Mar. 19, 2024, at 08:20. Some testified that they have experienced up to three blasts in a week. Jan. 29, 2024, at 2:08:58. Residents, Gary Prestianni and Andrew Rushton, testified that the duration of blast vibrations can vary depending on the location of the blast in the Quarry and where the residents are in their home during the blast. *See* Jan. 29, 2024, at 3:49:18 and 4:50:28. In fact, Mr.

Rushton stated that he was once knocked out of his chair by the force of one of Savage Stone's blasts. Jan. 29, 2024, at 4:50:28. Mr. Rushton also testified that the blasts frighten his children, who are both under 7 years old. Jan. 29, 2024, at 4:50:18. Ms. Chris Layson echoed this and testified that her children "freak out" during the blasts. Mar. 19, 2024, at 08:37. Ms. Layson's son has even asked if they can make a safe room to protect their family from the blasts. *Id.* at 08:42. The psychological effects of the blasts are not experienced only by children. Ms. Linda Smith-Barrett shared that she suffers from post-traumatic stress disorder from her time in the military. Mar. 19, 2024, at 2:50. During her testimony, Ms. Smith-Barrett stated that the blasting from the quarry is reminiscent of an "explosion" and is "very scary." *Id.* at 02:59.

Many residents testified about how their homes and property have been damaged from the blasts. Camille Edwards testified about damage to the walls and floors of her home. Opp. Exs. 4 a-d. Ms. Edwards also stated that during the blasts, her house vibrates to such an extent that it has knocked over and broken pieces of her Swarovski Crystal collection. Jan. 29, 2024, at 3:05:19. Mr. Prestianni testified that Savage's blasting caused the stucco on the outside of his home to crack. Opp. Exs. 5 (A)-(E). Shirley Stewart shared that blasting has caused nails to come though her ceiling, has caused her stairway to pull away from the wall, and has caused her deck to deteriorate. Opp. Exs. 6 (A)-(C). Mr. Rushton noticed cracks in his home's interior and exterior that he attributes to blasting from the quarry and significant cracks to his home's foundation. Opp. Exs. 7 (A)-(C). Khalid Qadwai recounted that during one blast, a lighting fixture fell out of his ceiling in his basement. Jan. 29, 2024, at 5:11:10. *See*

also Opp. Exs. 8 (A)-(G). All witnesses' homes were built before the Quarry was granted a Special Exception.

According to Edward Barnhouser, President of Savage Stone, Inc., Savage Stone maintains a fund to pay for damage caused by Quarry blasting. Jan. 29, 2024 at 1:35:34. The fund contains $25,000. *Id.* at 1:35:44. Savage Stone has never once paid for the damage they are causing to neighboring homes and personal property or dispursed any of these funds. *Id.* at 1:36:00.

Condition 13 requires Petitioner to "establish and implement procedures for investigation and reporting of vibration and damages attributable to the quarry operations on all homes within 1,000 feet of the quarry excavation area and the 12 Heritage Woods homes identified in the Petitioner's testimony." BA 95-58E (1997) at 44.

The Declaration of Covenants, Conditions and Easements with the Ridgely's Run Community ("Declaration") further broadened this Condition. Opp. Ex. 10. In Exhibit B of the Declaration, Petitioner agreed that it would (1) establish protocols "to determine any vibration effects on nearby homes, prior to the commencement of quarry operations," that it would (2) "maintain a $25,000 revolving fund for quick resolution of vibration damage should any occur," and that it would (3) "designate an independent arbitrator" to decide damage claims. Opp. Ex. 10 at 7. This Declaration, required by the original Howard County Board opinion granting the Conditional Use, broadened the scope of Condition 13. BA 95-58E (1997) at 44.

In defiance of this Condition, Petitioner has not implemented any procedures that could feasibly detect damage attributable to continuous blasting over twenty years. Jan.

29, 2024, at 18:13; Mar. 21, 2024, at 38:17. According to Randy Heckler, Operations Manager for the Quarry, Petitioner's initial response to any damage complaint is to send to the homeowner's property a Quarry employee with no experience in structural engineering or geology. Jan. 29, 2024, at 18:13 & 1:08:35; Mar. 19, 2024, at 4:00:06. This Quarry employee inspects the damage to the homeowner's property. Jan. 29, 2024, at 1:03:35. Various homeowners have testified about damage to their property. *Id.* at 2:09:51, 3:07:42, 3:51:07, 4:32:18, 4:50:20,5:10:33; & 5:15:20; Mar. 19, 2024, at 9:59, 22:15, & 34:42. Yet, every single complaint has been rejected by the Petitioner and no funds have ever been provided to repair damage to residents' homes. Jan. 29, 2024, at 1:35:50.

Camille Edwards, President of the Pleasant Chase Homeowners Association, testified to property damage attributable to blasts, such as large cracks on her driveway, a sinkhole in her front yard, cracks in her deck beams, and bathroom tiles tilting upwards. Jan. 29, 2024, at 7:42. Even though she witnessed this damage occur after blast vibrations, the response from Quarry employees has always been that her house is "settling." *Id.* at 3:19:55

Ms. Chris Layson, a homeowner who purchased her family home in 2017, testified to the sinkholes on her property, cracks on her sidewalks, her stairwell shifting, and the cracks to her newly built kitchen. Mar. 19, 2024, at 9:59. She has had a Quarry employee inspect her property three times and, each time the opinion is the same, that the house is "settling" even though these cracks are occurring after the intense vibrations from Quarry blasting. *Id.*

Gary Prestianni testified to numerous cracks forming on the back face of his house after an initial pre-blast survey was completed for his property. Jan. 29, 2024, at 3:51:07. After finding these new cracks, 3-4 of Petitioners employees visited Mr. Prestianni's property and stated the initial pre-blast survey did not cover all the cracks present on his property before the blasting began. *Id.* at 3:52:13 & 3:54:35. These employees never showed any report explaining their reasoning as required by Condition 13. *Id.* at 3:54:35. Since these established procedures failed to provide any meaningful review to determine which damages are caused by Quarry operations, Petitioner has failed to comply with Condition 13.

Petitioner contends that homeowners unsatisfied with this initial visit can request that a seismograph be placed near their property for the next several blasts. *Id.* at. 18:13. However, seismographs alone do not indicate causes of past damage. Petitioner's witness, Mr. Patrick Hastings, the President of Seismic Surveys and a certified geologist, testified that these seismograph readings are only used to determine if blast vibrations are within State levels. Mar. 21, 2024, at 38:17. The seismograph readings are not used to estimate damage attributable to the blast, or to measure the cumulative impact of past blasting. *Id.* In response to resident concerns, Petitioner recites the information obtained by the seismograph, maintaining their position that any blast below State standards could not possibly result in the damage residents are describing. *Id.* at 39:05. Petitioner also has not designated an independent arbitrator when residents contest the cause of damage and has thus violated its

agreements with the Ridgely Run Community. Jan. 29, 2024, at 18:13 & 1:35:26. As a result, these procedures are inadequate to investigate "damages attributable to the quarry operations".

Petitioner argues that it is in compliance with Condition 13. Randy Heckler testified regarding the Quarry's procedures for investigating claims of vibration and damages allegedly caused by Quarry operations. Mr. Heckler testified that each year, the Quarry mails letters to neighbors within 1,000 feet of the Quarry's blasting and posts a notice in the Howard County Times, providing general information to the community of the blasting to occur during the upcoming year as well as contact information, including a telephone number, for Quarry representatives. The Quarry's website contains multiple telephone numbers and email addresses, including one for a community liaison, to whom community members can reach out with questions, concerns, or damage claims. Additionally, Mr. Heckler testified that the Quarry has been a part of the community for two decades. Petitioner posits that having taken part in numerous community meetings, Mr. Heckler's contact information, and contact information for other Quarry employees, is generally known to nearby residents. Mr. Heckler testified that on the morning of any day on which blasting is expected, telephone calls and/or emails go out to neighbors who have asked to receive such notifications.

Mr .Heckler testified that once a complaint is received, Mr. Heckler or another Quarry employee will reach out to the complainant to discuss the particular blast that led to the complaint, including details of the vibration levels and air overpressure recorded for that blast. The complainant is offered the chance to meet with Seismic Surveys, an

independent company unaffiliated with the Quarry that employs licensed geologists, which would set up a temporary seismograph at the complainant's residence (if consented to by the complainant) and which would perform a Damage Claim Investigation and issue a written report. Mr. Heckler testified that every complainant who has wanted an independent investigation (since any investigation was conducted by a Quarry employee it is difficult to consider such an investigation "independent") concerning damages allegedly caused by the Quarry has received an investigation and the written results thereof. Opposition testified that they seldom, if ever, received a written report from the "independent" investigation.

Mr. Hastings testified that Seismic Surveys offers to perform a Damage Claim Investigation (DCI) and to issue a written report any time a neighbor complains about, or makes a damage claim concerning, the Quarry. Mr. Hastings testified that Seismic Surveys' DCI process is in accordance with industry standards and that many companies that perform DCIs utilize the same procedures. Mr. Hastings did not know whether the industry standards utilized, as here, a required independent investigation with an independent arbitrator.

Seismic Surveys will prepare and issue a written DCI report that includes a summary of the damages alleged to have been caused by the Quarry; photographs of those damages; seismograph locations and data measurements (including measurements from the temporary seismograph if Seismic Surveys was allowed to install one); a comparison of that seismograph data to regulatory limits and damage thresholds; a discussion of human sensitivity to vibrations; a description of other factors, such as

environmental stresses, that could be causing the damages; and Seismic Surveys' conclusions. A summary of all DCIs performed during the prior five year term (Pet. Ex. 16), and the actual DCI reports produced from all DCIs that Mr. Hastings personally attended during such timeframe were provided. Pet. Exs. 23 and 17a.

In connection with the instant request for an extension, Petitioner hired Douglas Rudenko of Vibra- Tech Engineers, Inc., to conduct a peer review of Seismic Surveys' work and to confirm the accuracy of Seismic Surveys' reports and conclusions. Mr. Rudenko is a professional geologist and licensed blaster, who has lectured extensively on the science involved with blasting, and he testified that his company performs DCIs similar to those performed by Seismic Surveys.

Mr. Rudenko testified that he reviewed Seismic Surveys' DCI reports as well as all available seismograph data going back one year prior to each damage claim. Mr. Rudenko testified that based on the seismograph data and the distance between each blast, the seismographs, and the complainant's house, he calculated what the ground vibration levels would have been at the complainant's property. Mr. Rudenko concurred with Seismic Surveys' DCI reports and agreed that all of the data was below the levels that could cause damage to the complainants' homes.

Petitioner alleges that it is scientifically impossible for Chase Land to have caused the damages alleged by the Opposition witnesses. Mr. Hastings testified that the Quarry uses permanent seismographs, placed at the locations shown on Pet. Ex. 9, to continuously monitor the Quarry's blasting activities. Mr. Hastings testified that these permanent seismographs are checked every day to ensure they are in proper

working order, and they are calibrated annually in accordance with the manufacturer's recommendations.

During his testimony, Mr. Hastings described the science of the effects of blasting. Blasting can result in the movement of ground particles, and the velocity at which ground particles move is measured in inches per second. The seismographs monitor that velocity in three dimensions, with the greatest velocity out of the three dimensions being the peak particle velocity (PPV). Petitioner argues that decades of research on ground vibrations, including studies conducted by the United States Bureau of Mines, have scientifically proven that ground vibrations from blasting below PPVs of 0.75 inches per second do not cause even threshold damage to residential structures, although recent studies have indicated that the 0.75 inches per second figure is extremely conservative and that much higher levels would be needed to cause threshold damage. Threshold damage would be damage to the weakest part of a structure, such as the loosening of paint, small plaster cracks at joints between construction elements, and lengthening of old cracks. In addition to ground vibrations, blasting can also result in a wave of air overpressure measured in decibels. The government has extensively studied damage from air overpressure, concluding that air overpressure at or below 151 decibels cannot damage structures (although Mr. Rudenko indicated that while this number is generally accepted, some research suggests damage could occur above 140 decibels). Mr. Rudenko opined that any damage to a structure from air overpressure would only occur after extensive window damage, and Chase Land has never received a complaint to that effect.

Over the past five years, there were a total of 298 blasts at the Quarry. None of

those blasts resulted in a PPV exceeding the 0.75 inches per second standard (the vast majority of blasts were orders of magnitude below that limit), and the maximum reading at the permanent Pleasant Chase seismograph was 0.258 inches per second. All air overpressure readings from the permanent Pleasant Chase seismograph over the past five years were below 130 decibels. (298 blasts during the prior five years.) Pet.Ex.11.

Several Opposition witnesses testified as to their concerns that continuous blasting from the Quarry could have a cumulative effect on their homes. Mr. Hastings and Mr. Rudenko testified that this, too, has been well researched, including a case where the government specifically decided to study cumulative effects of blasting. In that case, a house was built near a coal mine and experienced approximately 200 blasts resulting in ground vibrations with PPVs ranging from 0.1 (similar to numbers seen at the Quarry) to 7 inches per second, with no threshold damage found. The researchers then mechanically shook the test house continuously to induce fatigue cracking, and threshold damages first appeared after 56,000 cycles, the equivalent of having to blast for 28 years, twice per day, every single day, with ground vibration levels at 0.5 inches per second or higher. With the Quarry not blasting at nearly that frequency and not producing ground vibration levels nearly that high, Mr. Hastings opined that at the Quarry's historic level of operations, it would take at least 340 years for the Quarry to cause threshold damage to structures if it were producing constant ground vibration PPVs of 0.5 inches per second, which it is not.

Mr. Hastings testified that studies have shown that other factors, such as environmental stresses occurring on a continuous basis like temperature, humidity, and

wind fluctuations, impart more stress on a structure than vibrations from blasting. Drywall, nails, and wood all move differently from each other, contracting and expanding, and causing considerable stress on structures. For example, Mr. Hastings noted that outdoor temperatures can change 20 to 30 degrees a day, and studies have found that such changes are akin to imparting 8 inches per second of PPV on a house, all day, every day. Mr. Hastings noted that during the testing on the cumulative effects of blasting discussed above, the researchers found more damage was caused to the test house when no blasting was occurring, simply from environmental factors.

Mr. Rudenko agreed, noting that based on the research he has read and his own measurements, a home and the materials it is made of are subjected to stress every day from a variety of sources. He testified that the most common are changes in temperature and humidity, two factors that subject construction materials to great strains on a regular basis. Mr. Rudenko testified that other stresses that work on a home on a regular basis are wind loads, snow loads, soil pressures that act on the foundation, and freezes and thaws. He noted that oftentimes, these loads exceed the strength of a home's construction material. As an example, Mr. Rudenko testified that he studied a crack by putting a gage on it and measuring the movement every minute for an entire year, and he found that the crack would open and close every day due to changes in temperature and changes in the weather (humidity or seasonal pressure changes). Mr. Rudenko stated that those factors consistently put a much higher level of stress on a home than a dynamic event such as a blast.

Mr. Hastings and Mr. Rudenko both also testified as to human response to

vibrations. Although the PPV necessary to cause threshold damage is 0.75 inches per second, humans can detect vibrations orders of magnitude below that level, at 0.01 or 0.02 inches per second. As Mr. Rudenko testified, just because humans can feel vibrations does not mean that those vibrations are causing damage to construction materials, which he testified can take a lot higher levels than what humans can feel.

Mr. Rudenko also testified that the Quarry uses electronic detonators and single hole signature analysis, which he said were state of the art, to reduce the effects of blasting to the greatest extent possible. Given their costs, Mr. Rudenko noted that not every operation across the country utilizes these methods. He further testified that the Quarry uses 3-D laser profilers to profile the face of the bench to try to mitigate any potential higher overpressure results, and that the Quarry utilizes drones in order to videotape the dynamics of, and to learn from, every blast. Mr. Rudenko stated that the Quarry's use of multiple permanent seismographs around the property, when applicable regulations require monitoring only the nearest structure not owned by the Quarry, tells him that the Quarry is concerned about its impact on the community. Finally, Mr. Rudenko testified that the Quarry tries to design the blast and to predict the vibration levels of every blast before they load the explosives, which he noted is indicative of a good quarry operator and is not the practice of every operation.

Ultimately, Mr. Hastings concluded that based on industry and governmentally accepted science, research, and data, and based on the PPVs and air overpressure measurements of the Quarry's blasting activities, the Quarry cannot be causing the property damages testified to by the Opposition witnesses. Similarly, Mr. Rudenko

concluded that the energy generated by the Quarry's blasting was not enough to cause the damages observed.

Petitioner argues that no Opposition witness produced any empirical evidence linking the Quarry to their property damages, but it is not the Oppositions burden of proof to do so. It is the Petitioners' burden to show by a preponderance of evidence that the damages ensuing were not caused by the Quarry.

Petitioner claims that it is scientifically impossible for Chase Land to have caused the damages alleged by homeowners. This is plainly false, as that fact has not been proven either by the scientific community or in this case. Petitioner has not produced one study scientifically examining the long-term and cumulative effects of over 20 years of blasting on two story residential structures. Petitioner's own expert, Mr. Rudenko, was not aware of any studies that have taken place over a 20-year period to determine cumulative blasting effects. Mar. 21, 2024, at 1:51:58. In support of Petitioner's theory that it is not in violation of Condition 13, Petitioner's witnesses cite a 1984 U.S. Bureau of Mines study that attempts to model what nearby homes might look like after 20+ years of blasting at a coal mine. The study was conducted for only 2 years and not the 20 years the Oppositions homes have been the recipient of the blasts and vibrations. Mark S. Stagg, et al., Effects of Repeated Blasting on a Wood Frame House, Rep. Of Invest. 8896 at 2 (1984)

Importantly, the Bureau of Mines study does not account for the psychological impacts of blasting for any duration. Nor does it address how the blasting impacts

vulnerable populations, such as those with PTSD like Ms. Smith-Barrett. Mar. 19, 2024, at 02:50. *See also* 95-58E, at 27. Psychological impacts are one of the cumulative impacts that blasting causes. Petitioner has offered absolutely no evidence that addresses this fact.

Petitioner's witness cites Galileo's formula for the acceleration to bolster their argument that their extremely old data is scientifically sound. By Petitioner's logic, smoking does not cause lung cancer because there was no scientific proof of that in the early 1600s. Old science is not always good science.

Petitioner claims that "no opposition witness...produced any empirical evidence linking the Quarry to their property damages." This is not the homeowners' burden. The burden of persuasion and production lies wholly and exclusively with the Petitioner. HCZR § 131.0.G.

Further, Petitioner claims that because the homeowners are not geologists or are not familiar with the science of blasting or vibrations, they are not qualified to testify to their lived experiences. This is a fundamental misunderstanding of eye-witness testimony and, again, Petitioner's burden in this case. The record is replete with testimony from residents that they feel the blasts almost every week and that blast intensity has become greater over time. Residents also testified that they have seen things fall off their walls and their homes shake during a blast. There is no doubt they feel the blasts and they have seen the damage to their properties increase over time.

As Petitioner notes, the 10-second per month blasting rule fails to account for the vibrations that occur after a blast. These vibrations, according to resident testimony, can

last for several seconds even after a blast is heard. Petitioner has not implemented any process to monitor the duration of blasts experienced by nearby residents. Petitioner has claimed that they take seismic measurements outside of the Quarry. However, the seismographs do not account for the duration of blasting from the pit of the Quarry to the homes on Mission Road and in Pleasant Chase. Thus, contrary to Petitioner's assertion, compliance with the 10-second condition does not mean that neighboring residents are not experiencing harm.

Petitioner argues that the Hearing Examiner should not "revisit the scope of approval" granted by the Board of Appeals in 1997. However, Petitioner also states that everyone knew that vibrations and dust are "inherent effects of quarry" and "were already factored in by the Board of Appeals when it approved the Quarry use." Petitioner wants the Hearing Examiner to only consider the broader context of the Board of Appeals 1997 decision when it is beneficial to them. Petitioner cannot have this argument both ways. Because the Board's original grant of a "special exception" was premised on the assurances made by Chase Land during those hearings, it is proper for the Hearing Examiner to consider the accuracy of those statements today. Mr. Nawrocki testified that the 10-second standard was developed to assuage resident concerns about blast duration. There was no mention of a conversation wherein residents were warned about subsequent vibrations after a blast. Nor was there mention of how the composition of the land around the quarry would impact how blasts vibrations are experienced. According to Petitioner, while residents can be assured that the blasting will not interfere with

their lives for more than 10 seconds a month, they are on their own dealing with the subsequent vibrations. In these ways, Petitioner's current operations violate the original intent of Conditions 13 and 18.

B. Dust

After each quarry blast, gabbro rock is mined and travels through various open areas in the Quarry system. Mar. 19, 2024, at 3:24:46. First, the rock is unloaded into the Quarry's primary crusher hopper. *Id.* at 03:25:08 & 4:05:50. This hopper is uncovered. *Id.* Then, the crushed rock is unloaded onto a conveyer belt system, containing 45 conveyer belts. *Id.* at 3:25:19 & 03:26:04. None of these conveyers are covered on the sides. Pet. Ex.7(A). All this equipment is above the tree line which separates the Quarry from Mission Road and Pleasant Chase. Jan. 29, 2024, at 4:08:04. After traveling through the conveyer belt system, the crushed rock exits into an uncovered surge pile. Mar. 19, 2024, at 3:25:36 & 4:05:50. This crushed rock is eventually processed and emptied into unenclosed piles. *Id.* at 3:26:08 & 4:05:50. Petitioners allege that sweeper trucks then vacuum up the processed gravel and drive onto Route 1 for delivery. *Id.* at 3:26:21. There is a prevailing wind from west to east that carries gabbro dust as well as particulate matter emissions from the trucks on site (collectively "fugitive dust") from the Quarry site to homeowners' property on Mission Road and in

Pleasant Chase. Jan. 29, 2024, at 4:07:50. While Petitioner states that water trucks spray gabbro rock during operating hours, these measures have not prevented fugitive dust from travelling offsite. *Id.* at 4:07:36. In the winter, when there are no leaves on the trees, even more fugitive dust travels to the nearby residential area. *Id.* at 4:08:24.

This fugitive dust covers residents' vehicles, outdoor furnishings, patios, decks, and windows. *Id.* at 4:41:25. If homeowners leave their windows or doors open, the dust also coats be cleaned with gloves. *Id.* at 3:23:57. If the dust touches the skin, it causes an allergic reaction. *Id.* This dust can also discolor outdoor furnishings, requiring residents to use power tools to remove the black stains. *Id.* at 2:11:37. If a resident leaves their windows open, the dust can cause breathing problems and the need for an inhaler. *Id.* at 3:24:02. Some residents are concerned about the health of themselves and their children. Mar. 19, 2024, at 3:10:16. They avoid having their family use outdoor areas and frequently keep their windows closed. *Id.* at 3:08:55. Parents are concerned about having their children attend the nearby school that is across the street from the quarry. *Id.* at 3:10:23.

The Petitioner did not address these fugitive dust concerns related to the particulate matter emissions from the trucks and heavy operating equipment on the quarry site. Petitioner objected to questions directed at its industrial hygienist expert, Thomas Koch, which pertained to particulate matter emissions from these sources. Mar. 28, 2024, at 1:10.00. However, this same witness acknowledged that fine particulate matter emissions are regulated by EPA and OSHA to prevent respiratory

problems. *Id.* at 1:08:01. Residents living in Environmental Justice communities, such as those at Pleasant Chase, are particularly susceptible to harm from such emissions. Jan. 29, 2024, at 3:25:26.

Mr. Heckler testified that dust emissions from the Quarry were regulated under an air quality permit (the "Air Quality Permit") issued to the Quarry by the Maryland Department of the Environment ("MDE") Air and Radiation Administration. Pet. Ex. 25. Petitioner argues that the Air Quality Permit is presently in effect and remains effective through September 30, 2026. Mr. Heckler further testified that the Quarry's procedures to control and maintain dust within the Quarry property have complied with the Air Quality Permit and applicable State regulations during the prior five years.

Mr. Heckler testified that MDE has inspected the Quarry 24 times over the past five years to check for compliance with the Air Quality Permit and State regulations, the vast majority of which inspections were unannounced. Pet. Ex. 12. Twice, MDE's inspections came about as the result of a neighbor's complaint. At one such inspection, the inspector noted a small amount of dust coming off of a piece of equipment and requested the Quarry to correct it, and the Quarry added a water hose that resolved the issue. At the other inspection that came about as the result of a complaint, and at each of the other 22 inspections, MDE reported no issues were observed. As Mr. Heckler noted, none of those 24 inspections resulted in the issuance of a citation or enforcement action by MDE.

Mr. Heckler further testified to the procedures utilized to control and maintain dust as required by the Air Quality Permit and State regulations. Once a blast occurs, and the

all clear is given that it is safe to proceed, the first piece of equipment into the pit is a water truck to wet down the freshly blasted rock in order to suppress any dust. That rock is then loaded into trucks to go to a crusher, and the water truck continues to wet the pile down. The trucks that have been loaded with rock then dump that rock at the primary crusher hopper, and multiple spray nozzles are stationed there to wet down and suppress dust from the rock that leaves the truck and enters the crusher. After the rock is crushed, it rides on conveyors up and out of the pit, which conveyors are covered to prevent any wind influence that could cause dust to blow from the conveyors. At each transfer point (being a point where the rock moves from one conveyor belt to another), additional wet dust suppression in the form of high-pressure misting is utilized all the way up and out of the pit.

Any dust from the crushed rock then reaches enclosed 40-foot-tall dust collection structures containing dust collection systems that draw dust through 298 dust bag filters at 50,000 cubic feet per minute. Every component of these dust collection structures must be properly maintained as a requirement of the Air Quality Permit. After the dust is separated, the rock itself continues on more conveyor belts with wet suppression at each and every transfer for approximately 45 conveyors. Finally, the rock reaches the final product piles, with pavement going all the way to the piles to allow the Quarry's water trucks to water the pile areas as well. Pet. Ex. 6 shows the general layout of these dust and air quality control equipment and measures. Pet. Exs. 7a through 7f, are photographs of these dust control measures.

The Quarry utilizes two sweeper trucks that vacuum dust off of all of the paved

surfaces of the Quarry property, from the finished product piles, to the scale house, and to the Quarry's entrance and exit at Route 1. Mr. Heckler testified that the two sweeper trucks run approximately 4,500 hours per year combined, and the water trucks run approximately 2,000 hours per year since they are not needed in rainy conditions. Any time a water truck or a sweeper truck needs maintenance or repair, the Quarry rents a replacement truck or engages a contract sweeper to ensure that dust control operations are never impacted. Mr. Heckler testified that the Quarry employs a maintenance team of eight individuals who are constantly performing preventative maintenance on dust suppression equipment, including all hoses, nozzles, and dust collector bags. Pet. Ex. 8, provides all such maintenance records, and Ex. 8a, documents the Quarry's utilization of contract sweepers.

Petitioner argues that because it has an effective Air Quality Permit and has not received any enforcement actions from MDE, that it has complied with Condition 17 which requires it to control and maintain dust emissions within applicable State regulations. However, Maryland state regulations also require Petitioner not to operate its facility such that it creates a nuisance. COMAR 26.11.06.08. While the Quarry's on-site operations may comply with its permit, Petitioner's operations still created a nuisance to its neighbors. Jan. 29, 2024, at 2:11:37, 3:23:57, 4:04:27 & 4:58:27. Mar. 19, 2024, at 28:16 & 3:08:55. Petitioner's Air Quality Permit cannot thus be solely relied on to determine if Petitioner complied with State dust regulations.

Petitioner claims the Opposition's photographs and testimony do not prove where the dust came from or that it is gabbro, the material Petitioner mines at the Quarry.

However, Oppositions' testimony establishes a link between the material mined and the material found on their properties. First, the evidence established that the common wind pattern in the area is from west to east, across the Quarry towards Oppositions' properties and not from the highway to the north. Jan. 29, 2024, at 4:08:00 & 4:59:15. Mar. 28, 2024, at 9:30 & 55:05. Second, Opposition testified that the material on their properties was unlike common dust. Jan. 29, 2024, at 2:11:37, 3:23:57, 3:45:09, 4:04:27 & 4:58:27; Mar. 19, 2024, at 28:16 & 3:08:55. Third, Oppositions' photographs of furniture and windows show this dust as being black, the same color as the rock mined at the quarry. Jan. 29, 2024, at 4:04:25; Pet. Ex. 7(B); Opp. Exs. 2A-2E. These provide a causal link that the material found on residents' property is gabbro dust and other air pollutants coming from the Quarry.

Petitioner argues that there is no scientific evidence that the dust on Oppositions' properties is gabbro. However, this argument improperly shifts the burden of proof. It is the Petitioner's burden to show this dust is not coming from the Quarry; it is not the residents burden. Howard County Zoning Regulations § 131.0.G. Moreover, some residents have complained to the Quarry about the gabbro dust for years and yet Petitioner has not taken the necessary steps to disprove what is readily visible to the naked eye. Jan. 29, 2024, at 3:23:00 & 4:06:27.

Petitioner incorrectly argues that dust emissions can only be in violation of State regulations if they pose health issues. However, COMAR 26.11.06.08 requires that premises not present a nuisance to neighboring landowners. A nuisance impairs the "use and enjoyment" of personal property. *Wietzke v. Chesapeake Conf. Ass'n,*

26 A.3d 931, 939 (Md. 2011). That residents cannot open their windows without risking black gabbro dust collecting in their homes, cannot use their outdoor furnishings without frequent cleaning, and are fearful to breathe outside air is evidence that this dust is a nuisance. Jan. 29, 2024, at 2:11:37, 3:23:57, 4:04:27 & 4:58:27; Mar. 19, 2024, at 28:16 & 3:08:55; *see Wietzke*, 26 A.3d at 947.

Petitioner is seeking to show that it is in compliance with the weaker standard of causing no adverse health effects, by referencing the samples analyzed by Vertex and Partner. However, that sampling was only conducted on two blasting days, February 29, 2024, and March 4, 2024, and Petitioner's industrial hygienists did not provide enough of a basis to suggest these two blasting days were adequately representative of every operating day in the past five years. Mar. 21, 2024, at 8:09 & 52:53. Furthermore, the industrial hygienists were specifically looking to see if the dust was within Occupational Health and Safety Administration (OSHA) regulations, which are standards that do not pertain to homeowners' use and enjoyment of their property. *Id.* at 15:30 & 58:15; 29 CFR 1910.1(a). Nor did they consider the impacts of PM2.5, fine particulate matter generated from Quarry diesel engines, on an Environmental Justice community. Mar. 28, 2024, at 34:20 & 1:10:00.

By creating a nuisance in violation of COMAR 26.11.06.08 and failing to adequately discredit these allegations, Petitioner is in substantial violation of Condition 17 of its Conditional Use permit.

C. Water

Condition 24 required Petitioner to comply with all federal, state and county laws over the five-year term of its last use approval. BA 95-58E (1997) at 45. This included complying with all aspects of its state issued federal Clean Water Act (CWA) general stormwater discharge permit. (CWA Permit). Evidence presented during hearings held between January and March 2024 showed: (1) Petitioner had discharged water pollution to the impaired Dorsey Run, although its CWA permit expired on May 1, 2022, and (2) Petitioner violated the pollution limitations set in its CWA permit.

Evidence that Petitioner's CWA permit had expired during the prior Conditional Use period was introduced during the testimony of Mr. Randy Heckler, Mr. Edward Barnhouser, and Mr. Colin Sumpter. Jan. 29, 2024, at 50:20. Mr. Heckler, Petitioner's Operations Manager for the last four and a half years, was shown Petitioner's Detailed Facility Report from the Environmental Protection Agency's (EPA) Environmental Compliance History Online (ECHO) website. Opp. Ex. 1; Jan. 29, 2024, at 50:20. The ECHO report showed that Petitioner's CWA permit was expired and had violated its permit in seven out of its last twelve quarters. Opp. Ex. 1 at 1-2.

Mr. Barnhouser, President of Savage Stone, expressed his belief that Petitioner's ECHO report showed it was expired because the State of Maryland did not renew its general permit with the EPA, but Petitioner's Quarry was granted an administrative extension. Jan. 29, 2024, at 1:17:30. However, Mr. Barnhouser provided no documentation to support the statement that Petitioner had been granted an administrative extension or when that occurred.

Mr. Sumpter, Resources Manager for Aggregate Management, was shown an MDE "General Permit for Discharges from Mineral, Mines, Quarries, Borrow Pits and Concrete and Asphalt Plants." Pet. Ex. 2; Jan. 29, 2024, at 1:54:20. Mr. Sumpter stated that this exhibit meant that 15-MM general permits, the type of permit issued to Petitioner's Quarry, would be automatically continued, and remained enforceable upon expiration until a general permit was reissued. Pet. Ex. 2 at 7; Jan. 29, 2024, at 1:56:19. This was later refuted by Pet. Ex. 4, during the testimony of James Lolcama, which revealed Petitioner would have had to sign and submit to MDE a "Declaration of Intent" in order to continue its CWA permit after it expired under a consent order. Pet. Ex. 4; Mar. 19, 2024, at 1:39.

Mr. Lolcama, a groundwater specialist—not a surface water or CWA expert—paid by Petitioner to express opinions regarding compliance issues with its CWA permit and violations, testified on March 19th. Mar. 19, 2024, at 1:06:38. Mr. Lolcama was shown an MDE consent order, which stated that the MDE 15-MM general discharge permit would expire on May 1, 2022. Pet. Ex. 4; Mar. 19, 2024, at 1:13:22. The consent order stated that if permittees signed and submitted to MDE a "Declaration of Intent," the consent order would allow current permittees to continue operating under its expired permit Conditions. Pet. Ex. 4.

Mr. Lolcama opined that Petitioner's CWA permit was not expired because the consent order allowed Petitioner's quarry to continue operating under its 15-MM permit until MDE's 22- MM permit was approved. Mar. 19, 2024, at 1:14:45. However, Mr. Lolcama was shown the consent order's sixth paragraph stating that persons must

submit a signed Declaration of Intent to MDE in order for the consent order to apply to them. Mar. 19, 2024, at 1:39. Mr. Lolcama admitted he did not "have qualification to answer" whether Petitioner was required to submit a Declaration of Intent and did not know whether Petitioner signed and submitted the Declaration of Intent required by the consent order. Mar. 19, 2024, at 1:39. Petitioner never submitted any documentation indicating that it signed and submitted a Declaration of Intent to MDE or any other proof that its CWA permit did not expire on May 1, 2022.

Not only has Petitioner been operating with an expired permit, a violation of state and federal law, Petitioner has also violated the pollution discharge limits set in the permit. *See* Opp. Ex. 1; Opp. Exs. 11(A)-(G). Mr. Heckler and Mr. Barnhouser were both shown EPA's ECHO Detailed Facility Report establishing that Chase Land had violated its permit limits. Jan. 29, 2024, at 51:40, 1:34:27. Despite their high positions in the company, neither were able to explain the permit violations. Jan. 29, 2024, at 1:02:18, 1:34:27.

Mr. Lolcama reviewed an aerial image of Savage Stone quarry, which showed the locations of buildings and the two outfalls, labeled as DP001 and DP002, where Petitioner discharges water into Dorsey Run. Pet. Ex. 5; Mar. 19, 2024, at 1:45:45. Mr. Lolcama explained that groundwater seepage and rainwater can collect in Petitioner's pit, in the upper left corner of the Quarry image, where mining operations occur below surface level. Pet. Ex. 5; Mar. 19, 2024, at 1:46. The water in the pit is pumped out or "dewatered" with a sump pump and channeled through pipelines carrying water to settling basins within the quarry. Mar. 19, 2024, at 1:46:30. The water within the settling

basins, visible as light-blue pools on the aerial image of the facility, then get discharged through outfalls DP001 and DP002 into Dorsey Run. Pet Ex. 5; Mar.19, 2024, at 1:51:45. Mr. Lolcama explained that during this process, the water interacts with calcite and gabbro rock onsite that can affect discharged water's pH. Mar. 19, 2024, at 1:47:36.

Next, Mr. Lolcama was shown eight Daily Monitoring Reports (DMRs) submitted by Petitioner to MDE for different months during the previous five years. These reports contain the scientific analysis of water samples taken by Petitioner as required by its discharge permit. Resp. Exs. 11(A)-(G); Mar. 19, 2024, at 2:00:21. Specifically, Petitioner's CWA permit required that it comply with monthly average and daily limits on the amount of total suspended solids (TSS) and pH (a measure of alkalinity) it could discharge into Dorsey Run from each outfall. Opp. Exs. 11(A)-(G). These samples were taken from outfalls One and Two. *See* Pet. Ex. 5 (showing outfalls labeled as DP001 and DP002).

Mr. Lolcama agreed that during each month only one sample was taken to represent the average monthly limits on TSS and pH. Mar. 19, 2024, at 2:21:05. In an effort to explain away these obvious violations, Mr. Lolcama opined that, although a daily maximum and minimum limit was in the DMR, they were not really there "for all intents and purposes" because the only relevant limit is the monthly average. Mar. 19, 2024, at 2:14:55. Mr. Lolcoma speculated that MDE likely only included the daily measurements in the DMR to compare the monthly average against daily samples taken. Mar. 19, 2024, at 2:16:00. This testimony was later refuted by Doug Myers, who explained daily measurements are a requirement of Petitioner's CWA permit. *See* Mar. 28, 2024, at

1:53:53.

The eight DMRs each showed violations of Petitioner's monthly average, daily TSS, and pH permit limits during those months. Opp. Exs. 11(A)-(G). Mr. Lolcama discussed each of the DMRs and agreed the pollutant limit violations were correct but opined—without citing the basis for either opinion—two reasons the violations were not significant. Mar. 19, 2024, at 2:00:00. First, Mr. Lolcama claimed that discharges with pollutant loads exceeding the limits set by MDE's general permit were not violations unless MDE issued a violation order. Mar. 19, 2024, at 2:04:50. Second, Mr. Lolcama claimed that there was a range of uncertainty which allowed permittees to exceed their MDE permit limits. Mar. 19, 2024, at 2:05:30. However, Mr. Lolcama was unable to show where the range of uncertainty was listed in the DMRs or Petitioner's CWA permit. Mar. 19, 2024, at 2:06:43. Both of these opinions were later refuted by Mr. Myers. *See* Mar. 28, 2024, at 1:41:40, 1:53:53.

At the March 21, 2024, hearing, Petitioner submitted into evidence web pages from MDE and EPA's websites, which explained that Petitioner's eight months of exceeding its permit's pollutant limits were violations of its CWA NPDES permit, regardless of whether MDE took enforcement action. *See* Pet. Ex. 26 ("The term 'Violation' means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions"); Pet. Ex. 27 ("A violation may indicate that the facility released excessive pollutants. The type of violation identified will be indicated in the Detailed Facility Report."); Mar. 21, 2024, at 3:10:00.

Oppositions Clean Water Act expert, Doug Myers, Chesapeake Bay

Foundation's (CBF) Senior Scientist for Maryland with a background in marine biology and environmental science, testified on March 28, 2024, and addressed Petitioner's CWA permit violations. Mar. 28, 2024, at 1:29:48. Mr. Myers is knowledgeable about the CWA and MDE's policies for setting and enforcing pollutant limits in general discharge permits because the CWA is the lynchpin for setting Chesapeake Bay clean-up requirements, especially the Chesapeake Bay Total Maximum Daily Load (TMDL). Mar. 28, 2024, at 1:34:30. The TMDL is relevant to this proceeding as it is designed to reduce, among other pollutants, sediment such as total suspended solids. Mar. 28, 2024, at 1:34:30. Mr. Myers explained how MDE created pollutant limits for the general wastewater discharge permit with which Petitioner must comply. Mar. 28, 2024, at 1:38:30.

Mr. Myers discussed several issues related to Petitioner's violations of its CWA permit. First, Mr. Myers explained that the DMRs establishing months of pollutant discharges outside the permit's limits were violations of Petitioner's CWA permit, regardless of whether MDE took enforcement action. Mar. 28, 2024, at 1:53:53. In fact, for some of the months, there were violations of both the monthly average and daily limits, which constituted two violations in one single month. Mar. 28, 2024, at 1:53:53. Furthermore, Mr. Myers explained that regardless of MDE's decision not to enforce the permit terms, the CWA allows citizens to sue facilities that violate their permit limits. Mar. 28, 2024, at 1:43:45. Additionally, Mr. Myers explained that when MDE calculates the TSS limits at and pH limits for general permits, it accounts for outer ranges of pollutant discharges that can safely be diluted by the receiving water body; therefore,

there is no acceptable range of uncertainty allowing a facility to discharge pollutants beyond its permit limits without causing harm. Mar. 28, 2024, at 1:41:40. When MDE set the pH monthly average range at 6.5 and 8.5, pH daily range at 6 and 9, monthly limit of TSS at 45, and daily limit of TSS at 60, it already determined those limits to be the outer bounds for those pollutants to be discharged. *See* Opp. Exs. 11(A)-(G); Mar. 28, 2024, at 1:41:40.

Second, Mr. Myers explained the harm to water and aquatic wildlife from Petitioner's discharges. Petitioner's pH violations affect the alkalinity of the water and were high enough to create a toxic shock to fish or invertebrates exposed at the discharge points. Mar. 28, 2024, at 1:48:45, 1:58:20. Petitioner's pH violations can also have downstream effects by making phosphorous in the water more biologically active to feed phytoplankton blooms, which use dissolved oxygen in waterways such as the Chesapeake Bay. Mar. 28, 2024, at 1:50:10. Mr. Myers also discussed how Petitioner's excessive TSS discharges may include sediment or suspended rock from the Quarry, thereby increasing the cloudiness of the water. Mar. 28, 2024, at 1:51:15. TSS in waterways can clog the gills that fish, worms, clams, and freshwater fish use to breathe, which can result in stress or death of the organisms. Mar. 28, 2024, at 1:52:35.

Third, Mr. Myers explained that the harm from Petitioner's violations is compounded by its location. This is because Petitioner's outfalls discharge into Dorsey Run, a tributary of the Little Patuxent watershed, which is impaired for excessive sediment. Mar. 28, 2024, at 1:36:00. Mr. Myers explained that "impaired" means the total load of sediment coming into Little Patuxent watershed on a daily and yearly basis

is more than what it can handle to maintain numeric water quality standards set by the state of Maryland. Mar. 28, 2024, at 1:36:50. Furthermore, Mr. Myers explained that Petitioner's violations were particularly harmful because MDE has not yet issued a general permit that has been updated with more restrictive pollutant limits to account for the presence of Environmental Justice communities, like the homes in Pleasant Chase Homeowner's Association, or excessive rainfall created by climate change. Mar. 28, 2024, at 1:42:24.

Petitioner argues that while in certain months over the past five years, sampling results from the Quarry's two point source discharge locations under the NPDES Permit exceeded the maximum levels allowed by the NPDES Permit, that such exceedances should not be considered violations of law.

Every month, the Quarry collects water samples at each discharge location and tests for pH and total suspended solids, and the results are submitted to MDE monthly via Discharge Monitoring Reports (DMRs). Mr. Lolcama testified that over the past five years, the Quarry has submitted a total of 120 DMRs to MDE, reflecting one DMR per month for each of the two discharge locations. Mr. Lolcama noted that out of those 120 DMRs, 13 total DMRs contained test results outside of the pH and total suspended solids limits of the NPDES Permit.

Mr. Lolcama was questioned about the various exceedances. For pH, one exceedance of 6.4 was below the minimum monthly average of 6.5 by 0.1 units, and the remaining exceedances were above the maximum monthly average of 8.5 by between 0.1 to 0.37 units. Mr. Lolcama, arguing that the exceedances are small numbers, when

comparing the 8.5 standard to readings of 8.6, 8.7, or 8.8, the numbers are virtually indistinguishable, the actual difference between those numbers is small, and the uncertainty of measuring devices must be taken into account.

For total suspended solids, a few readings exceeded the maximum monthly average by only one or two milligrams of solids per liter of water, while two months showed total suspended solids as high as 87 and 97 milligrams of solids per liter of water. When asked if the elevated total suspended solids measurements could be a result of rock particles generated by the Quarry's blasting activities, Mr. Lolcama testified that every exceedance for total suspended solids occurred at the 001 basin, which does not contain the water being pumped from the Quarry pit where blasting occurs. Instead, the 001 basin collects surface water runoff. Mr. Heckler also addressed the issue of whether the Quarry's water-based dust suppression systems were contributing to increased total suspended solids readings, testifying that water from the water trucks and misting operations end up mixing in with, and go out with, the final products sold by the Quarry, which contain approximately 5% moisture.

Mr. Lolcama testified that he believed the larger total suspended solids readings were anomalous and looked as if they would be related to a stormwater event, and he testified that for these larger exceedances, there was a relationship between rainfall and the elevated levels of total suspended solids in the runoff water. He noted that irrespective of whether the property contained a quarry use or any other use, rainfall cannot do anything other than infiltrate into the ground or run over the ground, and that runoff scours and carries particles of dirt into the discharge system. Mr. Lolcama testified

that the higher total suspended solids readings had nothing to do with Quarry operations but were instead related to naturally occurring rain events.

Mr. Lolcama testified that any measurement for pH or total suspended solids contains some level of uncertainty; for example, because temperature affects pH measurements (he noted that pH increases by roughly 0.1 units per a 10 degree drop in temperature), testing the exact same water on a cooler day compared to a warmer day could cause a sample that would otherwise be within the acceptable range to be slightly outside of the range.

Mr. Lolcama opined that these discrepancies are not violations of the NPDES Permit but are instead exceedances of the permit limits. He opined that an exceedance just means that the analyzed number was outside of the permitted threshold, and that such matters do not rise to the level of a violation of the NPDES Permit until the exceedances develop into a pattern. Mr. Lolcama believes that if there are chronic, long-term exceedances of a particular parameter, such as either pH or total suspended solids, then MDE will issue a violation order, essentially to force an operator to come back into compliance if the operator fails to do so on its own accord.

Mr. Lolcama testified that he reviewed all 120 of the Quarry's DMRs over the past five years. He stated that every time the Quarry's testing indicated an exceedance, the Quarry took corrective action to get the levels back within the acceptable range for the following month such that there were never exceedances in successive months. Mr. Lolcama noted that a violation order has never been issued to the Quarry. Furthermore, the ECHO report itself expressly provided that no violations were issued to the Quarry

and that during the reporting period, the Quarry had zero quarters with significant violations.

Mr. Myers testified that in Maryland, MDE is typically the enforcement body for Clean Water Act violations, although "if there are extreme cases the EPA may step in and take over enforcement if there is a severe water quality issue." It is undisputed in this case that the EPA has not stepped in.

Mr. Myers further testified that the Clean Water Act has built in provisions allowing for citizen supervision of water quality concerns, allowing community members and watchdog organizations to self-enforce provisions of the Clean Water Act through the legal system. He noted that the Chesapeake Bay Foundation has a sister organization that looks through DMRs and the EPA database to identify violations and will reach out to MDE when warranted. In cases where there is a fish kill or other indications that water quality is being significantly affected, Mr. Myers testified that the organization may have to bring a lawsuit to force MDE to take action. It is undisputed in this case that no such self-enforcement proceedings have been instituted against the Quarry based on the noted exceedances, and no litigation has been brought against MDE seeking that MDE take any action against the Quarry.

Petitioner claims that its CWA permit was administratively continued from the date of its May 1, 2022, expiration date based on a section of the MDE 15-MM general discharge permit authorizing an administrative extension until MDE's new permit is approved. Pet. Ex. 2. However, Petitioner failed to show that the 15-MM permit, or the continuation section, applied to Petitioner's quarry. If this were true, Petitioner could have

simply submitted a document from Maryland Department of the Environment (MDE) showing that Petitioner was specifically included as a facility whose 15-MM permit was administratively continued. MDE's 15-MM general discharge permit (Pet. Ex. 4) applied to all facilities in Maryland covered by the general permit, but it does not specifically say that it applies to Petitioner's quarry. Further, Petitioner's natural resources compliance officer, Mr. Colin Sumpter, claimed that Section H of the general discharge permit meant Petitioner did not need to take any further action to avoid expiration, and its 15-MM general discharge permit would be continued automatically.

Petitioner's own evidence proves that statement is incorrect. Petitioner introduced into evidence an MDE consent order that specifically required facilities to sign and submit a "Declaration of Intent" (also referred to as a "Notice of Intent") to continue operating under its previous 15-MM permit conditions beyond the expiration date of the original permit (Consent Order). Pet. Ex. 4. However, Petitioner failed to produce any evidence that such a declaration or notice was ever signed and provided to MDE. Indeed, the CWA requires that facilities seeking coverage under a general permit "shall submit to the Director anotice of intent to be covered by the general permit. A discharger . . . who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge" 40 C.F.R.. § 122.28(b)(2)(i). The CWA does not allow discharges associated with industrial activity to be exempt from the Notice of Intent requirement, and the Consent Order makes clear that MDE did not intend to exempt facilities under the 15-MM permit from submitting a Notice of Intent, including Petitioner's quarry. 40 C.F.R. § 122.28(b)(2)(v).

Mr. Lolcama tried to explain the Consent Order, a ground water expert whose only experience or knowledge with the CWA permitting process— which regulates Petitioner's activities of discharging water above ground into the impaired Dorsey Run—was the fact that surface water interacts with groundwater. Mr. Lolcama opined that the Consent Order was further proof that Petitioner did not need to take any action in order to have its CWA permit continue past its expiration date. Given Mr. Lolcama's groundwater experience, it is not surprising that, when confronted on cross-examination with the plain language of the Consent Order, he said he wasn't qualified to explain what it meant. Mar. 19, 2024 at 1:38:31.

The Consent Order directly contradicts the opinions of Mr. Sumpter and Mr. Lolcama, as it specifically states that the continuation of a facility's general permit requires the signing of a "Declaration of Intent" to seek permit coverage for all water and stormwater discharges beyond the May 1, 2022, expiration date. Pet. Ex. 4. The Consent Order, and federal law, makes it plainly clear that the Consent Order does not apply to every facility in Maryland that was previously covered by the 15-MM general permit; it applies only to dischargers who made the positive action of signing and submitting a Declaration of Intent to MDE.

Petitioner failed to comply with its burden to prove that its 15-MM permit was not expired or otherwise granted a continuation of its 15-MM permit. Moreover, it is apparent that Petitioner has been discharging pollutants in violation of Maryland and Federal law. *See* 33 U.S.C. § 1311(a) ("Except as in compliance with this section . . . the discharge of any pollutant by any person shall be unlawful.").

Petitioner also violated Condition 24 when it failed to comply with its CWA permit discharge limits for pH and Total Suspended Solids (TSS). When confronted with the specific violations of its CWA permit discharge limits, Petitioner offered several erroneous excuses that the violations are either not violations, insignificant, or not attributable to Quarry activity.

First, Petitioner asserted that the eight months of violations reported were not actually violations but mere "exceedances". Petitioner does not dispute that eight of its monthly DMRs showed pH and TSS discharges exceeded its permit limits. *Id.* However, Petitioner relies heavily on Mr. Lolcama's unsupported opinion that the discharges are only violations if MDE, EPA, or a watchdog organization takes official enforcement action against the discharging facility. This position is not supported by law. Petitioner argues that exceedances are like only speeding a little bit. One is exceeding the speed limit or one is obeying the speed limit. Mr. Doug Myers explained, that is exactly the situation in the instant Petition. Mar. 28, 2024, at 1:53. That does not mean that exceedances of the permits are not violations of the law. Mr. Myers's testimony is far more credible than Mr. Lolcama's, as he has extensive expertise in CWA permitting, regulations, and MDE policy as the long time Senior Scientist at Chesapeake Bay Foundation (CBF). *Id.* at 1:34:30. CBF's research, Chesapeake Bay clean-up, outreach, and enforcement efforts are guided by MDE's permitting process, pollutant limits set in CWA permits, and enforcement policies. *Id.* at 1:34:30, 1:43:45.

As Mr. Myers explained, the pollutant limits in the general permits are created after MDE collects data on pollutants in waterways, like pH and TSS, and studies how the

pollutants affect biodiversity at certain levels. *Id.* Based on that research, MDE creates a Total Maximum Daily Load of pollutants for watersheds and then uses that load to create Watershed Implementation Plans. *Id.* Those plans are used to set daily and monthly average limits on pollutant discharges for facilities. *Id.* These pollutant load discharges incorporate levels of uncertainty and serve as the outermost limits that pollutants can be discharged before causing harm to the receiving waters. *Id.* at 1:41:40. Therefore, anytime Petitioner exceeds any of those limits for any pollutant, each exceedance is an individual violation of its CWA permit. *Id.* at 1:53:53. Mr. Myers explained that MDE and watchdog groups, do not have enough resources to enforce every violation. *Id.* at 1:43:24. That does not mean a lack of enforcement negates illegal discharges. They are still violations of the law.

The lack of merit in Petitioner's argument is further apparent from the fact that it relies on quotes from MDE's violation enforcement webpage and ECHO FAQ that—rather than showing violations only occur when MDE takes enforcement action—describes types of enforcement actions MDE may take when facilities are found to have discharged pollutants beyond its permit limits. Pet. Ex. 26-27. Nowhere in those guidance documents does it say that CWA permit violations do not occur until MDE takes enforcement action. In contrast, MDE's violations webpage plainly says that "[t]he term 'violation' means a transgression of any statute, rule, order, license, permit or any part thereof and include both acts and omissions." *See* Pet. Ex. 26. When Petitioner discharged pH and TSS beyond the daily and monthly average limits set in the 15-MM permit ten times over eight months, those were "transgression[s]" of a "permit or any part thereof" *Id.* Further, the

ECHO Detailed Facility Report for Petitioner's quarry states under "Compliance Status" that there were "Violations Identified," and each quarter that Petitioner's pollutant limits were exceeded show there was a "Violation Identified." Opp. Ex. 1. Although MDE lacks enforcement resources, "MDE encourages some type of enforcement response" for any violations of CWA permits. Pet. Ex. 26.

Both Petitioners and Opposition's exhibits support Mr. Myers' testimony that Petitioner violated its CWA permit when it discharged pollutants beyond the limits set by MDE, which were created to protect the quality and health of receiving waters and watersheds. Thus, Petitioner has routinely violated Condition 24.

D. Noise

From around 5:30 AM to 6:00 AM, Petitioner's Quarry has generated noise as loud as 70- 80 decibels which reaches Gary Prestianni's property 870 feet away from the Quarry. Mr. Prestianni has been regularly measuring the noise on his property using a decibel meter he acquired from his job. *Id.* at 2:23:50 & 2:25:47. He can hear this noise coming from the direction of the Quarry and recognizes that it is from the Quarry, because he hears stone being crushed and trucks backing up. *Id.* at 2:25:53 & 2:29:51. This noise only occurs when the Quarry is in operation. Jan. 29. 2024, at 4:00:33.

To rebut Mr. Prestiani's allegations, Chase Land asked Partner, in addition to its air quality testing, to also sample Quarry employees for noise exposure. Ms. Cuyle testified that Partner identified five Quarry employees for noise testing, and those employees wore noise sampling equipment on their shoulder area to represent an employee's hearing area. Ms. Cuyle further testified that Partner's noise test results all

showed noise limits that were below the permissible exposure level, indicating that the Quarry's operations were not excessively loud and were not violating applicable laws.

Although Petitioner attempts to dismiss the evidence of its noise violations, it fails to refute the credible testimony of Gary Prestianni. Mr. Prestianni has lived in the same home on Mission Road since the 1950s and has observed what the noise levels were like before the Quarry began operation and during the past two decades of the Quarry's operation. Jan. 29, 2024, at 3:45:09. Starting in 2016, he noticed a loud noise from the Quarry reaching his property around 5:30am and 6am. Mar. 28, 2024, at 2:23:55 & 2:25:13. Since then, whenever he hears the loud noise, Mr. Prestianni has recorded it with a decibel meter he regularly used at work. *Id.* at 2:24:18. He has observed that about two to three times a week, the noise from the Quarry exceeds 55 decibels. Jan 29, 2024, at 4:00:29; Mar. 28, 2024, at 2:25:50 & 2:29:00. He has taken these readings near his front door, roughly 870 feet from the Quarry property line and 60 feet from his property line, around 5:30am to 6am. Jan. 29, 2024, at 4:02:20; Mar. 28, 2024, at 2:25:46. His property at 8282 Mission Road is located just across the street from the Quarry. Jan. 29, 2024, at 3:44:50. Mr. Prestianni testified that he can hear the noise coming across the street and that it sounds like trucks unloading rocks. Jan. 29, 2024, at 4:01:29; Mar. 28, 2024, at 2:26:00 & 2:29:50. Further, he can distinguish noise from traffic on I-95 from Quarry operations. Jan 29, 2024, at 3:45:09; Mar. 28, 2024, at 2:29:50. This evidence about the direction and character of the noise is sufficiently probative to show the noise is coming from the Quarry and that it is in violation of Howard County and Maryland regulations.

Petitioner is incorrect concerning the relevant noise regulations. Howard County Regulation Section 8.900(b)(1) states "a person may not cause or permit noise levels emanating from any property, such that the levels received on residential property exceed

levels contained in Table 1 of COMAR 26.02.03.2B.(1)." Howard County Code § 8.900(b)(1). These County Regulations are citing to a Table in the Maryland Regulations establishing that noise emanating from a source to residential areas may not exceed 55 decibels during "nighttime hours." COMAR 26.02.03.2B.(1). Under both Maryland and Howard County regulations, "nighttime hours" mean "10:00 p.m. to 7:00 a.m." COMAR 26.02.03.01.B(14); Howard County Code, § 8.900(a)(3). So, taken together, noise levels are not to exceed 55 decibels from the hours of 10:00pm to 7:00am. By regularly emitting noise from 60 to 80 decibels onto Mr. Prestianni's residential property every week, Petitioner is violating Howard County and Maryland regulations. Mar. 28, 2024, at 2:29:00.

Petitioner argues that Mr. Prestianni's testimony lacks credibility because Mr. Prestianni did not document any complaints or decibel readings. *Id.* Mr. Prestianni, however, testified under oath that he took numerous decibel readings with a reliable device and called the Howard County Health Department multiple times but received no follow- ups. Mar. 28, 2024, at 2:24:18 & 2:26:45. (Much like the failure of MDE to take enforcement action against Chase Land for violating its CWA permit). While Mr. Prestianni did not document his complaints, that does not make his sworn testimony unreliable. *See* Hearing Examiner Rules of Procedure Article IX 9.1. In these proceedings, the Hearing Examiner is not bound by such technical rules of evidence. *Id.* Mr. Prestianni followed the rules, swearing to be truthful under the penalties of perjury, and his complaints and decibel readings are within his personal knowledge. Mar. 28, 2024, at 2:21:15.

Petitioner further asserts that its expert's noise sampling shows it complied

with the noise ordinance, but such a conclusion cannot be drawn from the evidence. The Noise Employee Exposure Report that Petitioner references only recorded noise near employees after 7a.m, not before. Pet. Ex. 29(B). As a result, this report does not state whether Savage Stone violated the pre-7a.m. noise ordinance. Moreover, the second noise report titled "Savage Stone Community Noise Report," strangely averages the noise occurring on the property from 6a.m. to 5p.m. *Id.* This does not tell us the exact decibel levels at each hour during that period including what the noise levels were before 7a.m. The evidence establishes that Petitioner violated Howard County Code, § 8.900(b)(1) multiple times by emitting noise above 55 decibels onto residential property. As a result, Petitioner has again failed to comply with Condition 24 and is in substantial violation of the Condition.

2. **Petitioner's violations were substantial.**

Petitioner attempts to excuse its violations because, in its view, it caused minimal harm. For instance, Mr. Lolcama made the unsubstantiated claim that there are levels of uncertainty which allow Petitioners to go over its permit limits by some unspecified amount. Mr. Myers put this myth to rest by explaining that any level of uncertainty is built into the permit limits by MDE. Mar. 28, 2024, at 1:41:40. The permit's discharge limits are the outermost boundaries that Petitioner can discharge pollutants before causing harm to the biodiversity of receiving waters. *Id.* at 1:41:40, 1:48:45, 1:52:35.

Mr. Lolcama also claimed the violations were numerically insignificant and thus not real violations of its discharge permit. Mr. Myers explained the significance

of the discharge limits set in Petitioner's permit and how Petitioner's self-reported violations harm biodiversity. *Id.* at 1:47:25, 1:51:15. While untrained individuals may see a pH jump from 8.5 to 8.6 as insignificant, Mr. Myers explained that pH numbers are on a logarithmic scale. *Id.* at 1:47:25. So, an increase from 8 to 9 is a tenfold increase. *Id.* Thus, a 0.1 increase in pH is significant to organisms living in the receiving water. Additionally, there were months where Petitioner's pH exceeded the 8.5 monthly average limits set in its permit with readings of 8.87 and 8.8. *See* Opp. Exs. 11(A), (C)-(D).

For TSS, Mr. Lolcama had to recuse himself from explaining why readings in February and July of 2023 at 87 and 97 mg/l—by any measure significantly above the daily maximum discharge limit of 60 mg/l and monthly average limit of 45 mg/l—were not significant violations of Petitioner's daily discharge limit. Mar. 19, 2024, at 2:18:11, 2:18:55. Petitioner failed to rebut those were substantial violations of its permit.

Mr. Myers explained how discharges of pH and TSS outside of MDE's outermost permit limits can clog the gills of fish, encourage the growth of phytoplankton downstream, and even cause death to the fish at the point of discharge. Mar. 28, 2024, at 1:48:45, 1:1:52:35. Furthermore, Mr. Myers explained the harm from Petitioner's violations are compounded by the fact that the old permit limits do not account for high runoff caused by increased rain from climate change or the presence of Environmental Justice communities, like Pleasant Chase Homeowner's Association. Mar. 19, 2024, at 1:42:24.

Petitioner also asserts that the violations were not significant because the Quarry always took corrective action. However, Petitioner did not specify what those corrective actions were. The only long-term corrective action apparent from the Discharge Monitoring Reports (DMRs) submitted to MDE is the suggestion that the sampler take samples earlier in the month and "take an additional sample to average out the result..." Opp. Ex.11(B). This sampling method of only taking one sample on one day per month, unless more samples are needed to bring the discharge numbers into compliance, skews the extent to which Petitioner violated its CWA permit. When asked about the obvious flaws in Petitioner's method of sampling one day per month, it was extremely telling that Mr. Lolcama, again, had to recuse himself from answering any questions about those issues. Mar. 19, 2024, at 2:10:47. It is unclear if any real corrective action was taken or how often Petitioner truly violated its CWA permit limits due to its poor sampling methods.

Petitioner claims its CWA permit violations are not attributable to its activities for several reasons. However, Petitioner is responsible for all of the discharges from its two outfalls and are required to make sure that its DMRs accurately reflect the pollutants in the discharges.

First, Mr. Lolcama suggested that the eight months of violations may be a result of the measurements being affected by a drop in temperature or uncertainty in measuring devices. *Id.* However, none of Petitioner's DMRs indicated the samples were compromised by an issue with temperature or miscalibration of measuring devices. *See* Opp. Exs. 11(A)-(G). Additionally, Petitioner's DMRs were

signed by Mr. Sumpter and submitted to MDE under penalty of perjury. 40 C.F.R. § 122.4(j)(5), (k). If Petitioner's DMRs are inaccurate and untrue because its employees failed to calibrate the equipment, then that is still a violation of federal law and Condition 24.

Petitioner also speculated that high TSS readings at outfall DP001 could not be attributable to the Quarry because outfall DP001's stormwater retention basin only collects surface water runoff, and the high readings were due to heavy rain events. To be clear, any runoff in the basin for outfall 001 would still be coming from Petitioner's property, where blasted rock and dust from the pit are carried around the property through conveyor belts and trucks. *See* Pet. Ex. 5 (showing outfalls DP001 and DP002 on Petitioner's property).

Additionally, CWA permits apply to the entire permitted property, and Petitioner was responsible for its pollution discharges at all times, rain or shine. *See* Pet. Ex. 26 ("[I]t should be remembered that any violation of a permit or of other requirements placed on a regulated facility is a violation for which the owner or operator is strictly liable ...."). This issue highlights why Petitioner must sample every day of the month, not just once, otherwise every violating facility can attempt to explain away its violations as one-off weather events. Petitioner is responsible for any pollutants discharged from outfalls P001 and DP002, regardless of whether it came from rain that ran over Petitioner's property or was pumped from the pit.

Petitioner further attempted to excuse its high TSS discharges by citing Mr. Heckler's claim that final products sold by the Quarry only contain 5% of moisture

after it is sprayed with misting water from trucks. Oddly, Petitioner admits that water from the misting trucks mixes with final product, which is rock from the Quarry. *Id.* There were no facts in evidence to support Mr. Heckler's claim. However, if true, it is entirely possible that the reason why Petitioner's rock product only contains 5% moisture is partially because the water sprayed from the misting truck runs off from the rock and carries rock particles into the settling ponds before being discharged through outfalls DP001 and DP002. This only further supports the idea that rock from the Quarry contributes to Petitioner's TSS discharges, as it is intuitively obvious that the bulk of Petitioner's land is the Quarry mine and piles of crushed rock.

Petitioner's CWA permit requires that it keep pollutant discharges below the limits set by MDE. Any violations, regardless of how the pollutants ended up in water discharged from the property, are violations of Petitioner's CWA permit. Under Condition 24, Petitioner had the burden to prove that it complied with all federal, state, and county laws. Respondents proved that Petitioner has been operating for years without a valid CWA permit and violated its permit during eight months of its last Conditional Use renewal period. In violation of federal law and Condition 24, Petitioner has failed to prove that it maintained a current CWA permit after it expired on May 1, 2022, or explain how it did not violate its CWA permit discharge limits. For these reasons, Petitioner has not met its burden under Condition 24, and its Conditional Use should not be renewed.

CONCLUSION

Petitioner failed to meet its burden of proving compliance with Conditions 13, 17, 18 and 24 of the Conditions of Approval of BA 95-58E by a preponderance of evidence. Petitioners failure to provide an arbitrator as required to settle complaints and its complete failure to distribute any of the $25,000 funds is evidence that Petitioner is operating in bad faith and in total disregard of its Conditions of Approval.

Additionally, Petitioner did not apply for an extension until a month before the expiration date of the Conditional Use, knowing that this would not allow sufficient time within which to conduct hearings on the extension request. This is another example of Petitioners bad faith. Petitioner has been operating the Quarry without the required Conditional Use since February 5, 2024, to date, despite receiving a violation notice from the County Department of Zoning and Planning. No doubt Petitioner plans on continuing to operate throughout the appeal process, further evidence of bad faith. If this Decision and Order is ultimately reversed on final appeal, the extension of time should run from February 5, 2024.

ORDER

Based upon the foregoing, it is this 13th day of May, 2024, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Chase Land, LLC f/k/a Chase Limited Partnership for the extension of time in which to operate a Quarry Conditional Use, in an M-1 (Manufacturing: Light) Zoning District, 3rd Councilmanic District, identified as Tax Map 43, Block 19, Parcel 234 and part of Parcel 235, and is also known as 8420 Washington Boulevard, Jessup, Maryland (the Property), be and is hereby **DENIED.**

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

Joyce B. Nichols

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.