



**Board of Directors**

Charles Clusen  
**Chair**

James McMartin Long  
Michael Wilson  
**Vice-Chairs**

Barbara Rottier  
**Secretary**

David Quinn  
**Treasurer**

Nancy Bernstein  
John Caffry  
Andy Coney  
Dean Cook  
James C. Dawson  
Lorraine Duvall  
Robert Glennon  
Roger Gray  
Evelyn Greene  
Sidney Harring  
Dale Jeffers  
Patricia Morrison  
John Nemjo  
Peter O'Shea  
Philip Terrie  
Chris Walsh

**Staff**

Peter Bauer  
**Executive Director**

Claudia K. Braymer, Esq.  
**Deputy Director**

Christopher Amato, Esq.  
**Conservation Director  
and Counsel**

**Via Email**

August 12, 2024

John M. Burth  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

Beth Magee  
New York State Department of Environmental Conservation  
Region 5  
232 Golf Course Rd.  
Warrensburg, NY 12885

**RE:           Barton Mines Company, LLC  
Ruby Mountain Garnet Mine  
Major Permit Modification  
NYSDEC Mine Permit #5-5230-00002/00002  
APA Permit #P79-140, P70-356, P87-39, P87-39A, P87-  
39B, P88-393, P88-393A  
Town of Johnsbury, Warren County**

Dear Mr. Burth and Ms. Magee:

Protect the Adirondacks (“PROTECT”) submits these additional comments concerning the application by Barton Mines Corporation, LLC (“Barton”) for expansion of the Ruby Mountain Mine in the Town of Johnsbury, Warren County. These comments address Barton’s most recent submission, dated July 2024, in response to the third Notice of Incomplete Permit Application (NIPA) and corresponding comments issued by the Department of Environmental Conservation (“DEC”) and the Adirondack Park Agency (“APA”). For the reasons set forth below and in the attached expert engineering report from Sterling Environmental Engineering, P.C., Barton’s application remains seriously deficient and cannot be deemed complete.

**Protect the Adirondacks**

PO Box 48, North Creek, NY 12853 518.251.2700

[www.protectadks.org](http://www.protectadks.org) [info@protectadks.org](mailto:info@protectadks.org)

*Follow Us on Twitter @ProtectAdkPark and Like Us on Facebook*

## **Climate Change**

The application fails to include any data or analysis concerning the potential climate change impacts of the proposed mine expansion and thus fails to provide critical information requested in the NIPAs and required by the Climate Leadership and Community Protection Act (“CLCPA”), Ch. 106, Laws of 2019, § 7(2). Although the mine expansion will result in a tripling of heavy-duty truck trips, the continued operation of multiple sources of greenhouse gas (“GHG”) emissions, and the clear-cutting of approximately 36 acres of forest, Barton has failed to provide any analysis of the climate change impacts of these actions.

The APA’s most recent NIPA stated:

The proposal appears to result in the conversion of approximately 36 acres of forest to a non-forested covertype during Phase I, and associated loss of forest carbon storage and forest carbon sequestration potential. Section 9.0 on page 56 of the narrative response document titled “Climate Change,” should be revised to account for this loss.

APA Third NIPA (Jan. 12, 2024) at 5.

Barton’s response to this comment is that “[t]he narrative has been updated to address Climate Change.” Letter from Bowman to DEC and APA (July 15, 2024) at 19. But the Climate Change narrative does not address the loss of carbon storage and forest carbon sequestration potential associated with the clearcutting of 36 acres of forest during Phase I of the project as requested by APA. On this ground alone the application cannot be deemed complete.

Moreover, the Climate Change narrative is woefully inadequate, consisting entirely of vague conclusory statements that are unsupported by any data or analysis. For example, Barton states that “[t]he Barton project as proposed will have a negligible impact on and will not impede New York State goals on . . . GHG emissions” but fails to provide any data concerning Barton’s current GHG emissions or how those emissions are projected to change as a result of the mine expansion. Barton Mine Permit Amendment and Modification (July 2024) at 67. Barton likewise fails to provide any data to support its claim that “[t]otal emissions from all sources for the life of the proposed project will remain essentially unchanged.” And Barton peppers its discussion with vague and qualified assertions such as that GHG emissions will be “essentially” unchanged, that the number, type and use of mobile equipment at the mine “should” remain the same, and that future (unspecified) technological advances “may” lead to a decrease in GHG emissions from mine operations. *Id.*

Section 7(2) of the CLCPA imposes a mandatory duty on all State agencies to consider the GHG emissions associated with the issuance of a permit or approval:

In considering and issuing permits, licenses, and other administrative approvals and decisions . . . all state agencies, offices, authorities and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of

the statewide [GHG] emissions limits established in [ECL Article 75]. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide [GHG] emissions limits, each agency, office, authority or division shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or [GHG] mitigation measures to be required where such project is located.

Ch. 106, Laws of 2019, § 7(2).

PROTECT urges DEC and APA to require Barton to conduct the GHG analysis as mandated by the CLCPA and as requested by PROTECT in its previous comment letter dated September 13, 2023. APA and DEC must fulfill their obligation under the CLCPA either by requiring the applicant to provide an analysis of the Project's direct and upstream GHG emissions or by confirming that the agencies are conducting their own analysis of those emissions.

### **Additional Environmental Issues**

PROTECT's comments identifying significant deficiencies in Barton's application concerning management of stormwater and industrial process wastewater, dust control, the so-called residual materials waste dump, and environmental monitoring are set forth in the report from Sterling Environmental Engineering attached hereto as Exhibit A.

### **Barton's "Legal Analysis"**

Barton has submitted as Appendix Y to the application materials a document entitled, "Legal Analysis of Permitting Authority and Practices for NYSDEC and APA." PROTECT has already responded to this submission, previously obtained by PROTECT through a FOIL request, by letter dated June 24, 2024. For your convenience, a copy of PROTECT's response to Barton's legal analysis is attached hereto as Exhibit B.

### **Conclusion**

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", written in a cursive style.

Christopher Amato  
Conservation Director and Counsel

# EXHIBIT A



August 12, 2024

Mr. John M. Burth  
Adirondack Park Agency  
PO Box 99  
Ray Brook, New York 12977

Ms. Beth Magee  
Deputy Regional Permit Administrator  
NYSDEC – Region 5  
232 Golf Course Road  
Warrensburg, New York 12885

Subject: Barton Mines Company, LLC  
Ruby Mountain Garnet Mine  
Major Permit Modification  
NYSDEC Mine Permit #5-5230-00002/00002  
APA Permit #P79-140, P70-356, P87-39, P87-39A, P87-39B, P88-393, P88-393A  
STERLING File #2024-01

Dear Mr. Burth and Ms. Magee,

Sterling Environmental Engineering, P.C. (STERLING) has been retained by Protect the Adirondacks to evaluate potential environmental impacts associated with the Ruby Mountain Garnet Mine (the “mine”) and the mine’s application for a major permit modification. The enclosed comments focus on the July 2024 submission by Barton Mines Company, LLC (“Barton”) in response to the third Notice of Incomplete Permit Application (NIPA) and corresponding comments issued by the New York State Department of Environmental Conservation (NYSDEC) and the Adirondack Park Agency (APA).

### **Drawing Consistency**

As further described in the following comments, the application drawings need to be reviewed and revised for consistency across the various reports. As an example, conflicting terminology is used related to ponds for the management of seepage water from the Residual Materials (RM) Pile Area. The Bowman cover letter refers to “Basin 2” and “Basin 3”, the Multi-Sector General Permit (MSGP) Stormwater Pollution Prevention Plan (SWPPP) refers to a “Process Water Pond”, the Geotechnical Review refers to the “Lower Raft Pond”, and the overall Site Plan Map refers to the “SPDES Pond Complex”. As further described below, control and management of tailings water is essential for geotechnical stability of the RM Pile and for protection of the environment from reported uncontrolled overflows during storm events. Clear detail on the seepage collection and management system is essential for a comprehensive review of the current operation and the proposed modification. The application documents lack any detail regarding the finger drains and the “closed loop” system for managing process water.

*“Serving our clients and the environment since 1993”*

### **Stormwater & Industrial Process Water**

The revised MSGP SWPPP is much more clearly organized, however, the following comments remain:

- Phased construction is indicated for improvements to existing stormwater management practices and installation of new practices. The drawings depict the “end of phase” conditions but there is no description of when or how during each phase the improvements will be constructed. For example, at the end of Phase 1, the SPDES Pond Complex is reconstructed into DA-2 Basin and a Process Water Pond; however, no details are provided for how the existing SPDES Pond Complex will be decommissioned, how the new basin/pond will be constructed, and how seepage water will be managed during the decommissioning/construction process.
- The proposed DA-2 Basin and Process Water Pond appears to require creation of a dam with a height of 30 feet and an impounding capacity greater than 1,000,000 gallons, which is subject to dam safety regulations and a Protection of Waters permit. Construction details of the proposed impoundment should be provided.
- *Section 5 – Spills and Releases* and the drawings must describe and depict the actual bulk petroleum storage areas that are potential sources of pollution to stormwater. The reportable spill language must be updated to indicate that any discharge to land is reportable. A spill is only not reportable if occurring on an impervious surface, cleaned within 2 hours, and confirmed less than 5 gallons.
- *Section 7 – Stormwater Controls* must further describe the roles and responsibilities for inspections. The mine includes erosion and sediment controls, which require inspection by a “Qualified Person” who has received four hours of NYSDEC endorsed training every three years. Further, the mine includes structural stormwater practices, which require inspection by a “Qualified Professional” such as a licensed Professional Engineer, Registered Landscape Architect, or other NYSDEC endorsed individual.
- *Section 7 – Stormwater Controls* must be revised to indicate corrective actions must be initiated within one day and completed within seven days.
- The description of finger drains and seep water management conflicts with Response #5 in the Bowman cover letter. The SWPPP states that finger drains discharge to process water ponds south of the mill. The cover letter states that the drains discharge to Basin 2 and Basin 3, which are located north and south of the mill. Details of the existing drainage system and proposed future drainage system need to be provided. This should include specific details related to engineering design, installation, monitoring, and maintenance.
- The Mine Permit Amendment & Modification refers to discharge of industrial process water from Outfalls 001 and 002 as “treated” discharge; however, there does not appear to be any water treatment. The Individual SPDES Permit requires development of a Best Management Practice (BMP) Plan that is reviewed and updated annually. The SWPPP only includes the Individual SPDES Permit as an appendix but contains no information about the collection and reuse of water for the “closed loop” system or the frequency and duration of uncontrolled overflow discharges from extreme precipitation events. This information needs to be provided.

**Dust**

The application documents remain deficient with respect to dust management. Our prior January 10, 2024 comment is reiterated below and remains relevant:

- The permit application documents includes a brief subjective narrative related to dust. The narrative states that dust can be generated during “unique conditions” including when wind exceeds 5 miles per hour. Supporting data should be included documenting the prevailing wind direction and speed probability (i.e., wind rose). 5 miles per hour is a low threshold to be considered a unique condition. Dust is stated to be mitigated through concurrent reclamation, hydroseeding, annual placement of biodegradable treatment, application of water, and installation of monitoring equipment. Most of these mitigation measures have long lead times to implement (e.g., reclamation). The mine includes acres of bare dust-generating material located on the elevated tailings pile. More detail is needed regarding the specific day-to-day material handling, monitoring, and mitigation measures. What parameters are actively being monitored and what are the action levels and responses? Offsite dust migration can be deposited in waterways and other sensitive areas. A fugitive dust control plan should be developed with clear criteria for determining when dust control measures must be employed.

**Residual Materials Management**

The July 2024 Geotechnical Review Report by Bowman includes a certification by a professional engineer licensed to practice in the State of New York; however, our prior January 10, 2024 technical comments remain unanswered and are reiterated below:

- Considering this is a feasibility level assessment and that construction is similar to a landfill, a minimum factor of safety of 1.5 should be required for both drained and undrained scenarios consistent with 6 NYCRR 363-4.3. Based on the construction assumptions, a sensitivity analysis should be required to assess if material properties have a significant impact on stability.
- The assessment states that the mine is in an area of low seismic activity; however, the mine is near the highest seismic hazard region in New York State as indicated on the USGS seismic hazard map. The assessment states that undrained behaviors (i.e., liquefaction) can be triggered by earthquake loading, even if only moderate in nature. Therefore, a seismic scenario should be required to demonstrate a minimum factor of safety of 1.0 consistent with 6 NYCRR 363-4.3.
- The Slope/W output shows deep seated failures that occur at the minimum safety factor and appear to be controlled by the assumed seepage conditions. Based on the size of the failures and the nature of the assumptions, a sensitivity analysis should be required to assess if different seepage conditions have a significant impact on stability.
- The Slope/W output shows only the single failure surface associated with the lowest safety factor. The output should be required to show the start and exit regions for the failure surfaces as well as the next 10 lowest safety factor failure surfaces. This will facilitate the review of the scenarios that show shallow veneer-like failures to determine if there are deeper seated failures with only slightly higher safety factors that need additional consideration.
- The assessment stresses the importance of the underdrain system for seepage control and long-term stability; however, no specific details are included related to engineering design, installation, monitoring, and maintenance. The application documents should include a design of the drainage and seepage control system.

In addition, the application documents do not provide adequate information to support Barton's claim that the proposed temporary and final revegetation is feasible for maintaining long-term stability. The documents state that hydroseeding will be performed to establish temporary vegetation on portions of the RM Pile that have not achieved final elevation. Supporting information should be provided that hydroseeding directly on the RM material with no organic substrate (e.g., topsoil) will establish vegetation. Further, the RM Pile has slopes steeper than 3:1, which requires special considerations for stabilization to ensure seed remains in place in accordance with the New York State Standards and Specifications for Erosion and Sediment Control. No information has been provided regarding how this will be achieved.

The 2024 Revegetation Testing Program Monitoring Report is inconclusive and repeatedly states that the source testing program reports have not been located. Monitoring reports that were located are reported as "incomplete" or "did not supply sufficient information". A new revegetation testing program should be developed and implemented to verify the proposed intermediate and final revegetation methods (e.g., soil preparation, species selection, planting, and maintenance) will be successful.

### **Proposed Monitoring Plan**

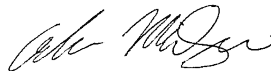
The application documents include a brief two-page qualitative monitoring plan. The plan does not describe any quantitative metrics or action levels that would trigger a re-evaluation of the geotechnical assessment or construction practices. For example, how much movement by an inclinometer is a concern? The monitoring plan should list specific assumptions that will be regularly monitored, the parameters that will be monitored to validate the assumptions, and the action levels that will require reporting to the agencies and additional review or a design change.

### **Environmental Monitor**

As previously indicated in our January 10, 2024 comments, STERLING recommends that the NYSDEC and APA require the mine to fund Environmental Monitors assigned specifically to the mine. The resubmitted application documents further detail the complexity of this project within the sensitive Adirondack Park. Real-time oversight is necessary to stay up to date on the current operations. Regulatory review for a project of this scale cannot be restricted to permit renewals on a five-year basis.

We appreciate your consideration of these comments.

Very truly yours,  
STERLING ENVIRONMENTAL ENGINEERING, P.C.



Andrew M. Millspaugh, P.E.  
Vice President

[Andrew.Millspaugh@sterlingenvironmental.com](mailto:Andrew.Millspaugh@sterlingenvironmental.com)



# EXHIBIT B

**Board of Directors**

Charles Clusen  
*Chair*

James McMartin Long  
Michael Wilson  
*Vice-Chairs*

Barbara Rottier  
*Secretary*

David Quinn  
*Treasurer*

Nancy Bernstein  
John Caffry  
Andy Coney  
Dean Cook  
James C. Dawson  
Lorraine Duvall  
Robert Glennon  
Roger Gray  
Evelyn Greene  
Sidney Haring  
Sheila Hutt  
Dale Jeffers  
Patricia Morrison  
John Nemjo  
Peter O'Shea  
Philip Terrie  
Chris Walsh

**Staff**

Peter Bauer  
*Executive Director*

Claudia K. Braymer, Esq.  
*Deputy Director*

Christopher Amato, Esq.  
*Conservation Director  
and Counsel*



**Via Email**

June 21, 2024

John M. Burth  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

**RE: Comments on Barton “White Paper” Barton  
Mines Expansion  
Town of Johnsbury, Warren County**

Dear Mr. Burth:

Protect the Adirondacks (“PROTECT”) submits these additional comments concerning the application by Barton Mines Corporation, LLC (“Barton”) for expansion of the Ruby Mountain Mine in the Town of Johnsbury, Warren County.

Specifically, this letter responds to legal arguments made in a submission from Barton, characterized by Barton as a “white paper” and apparently received by the Adirondack Park Agency (“APA”) on May 24, 2024, claiming that the APA lacks authority to issue a five-year permit for the proposed mine expansion. As discussed below, Barton’s letter mischaracterizes the applicable law and seeks to undermine and nullify the APA’s environmental review obligations under the Adirondack Park Agency Act (“APA Act”), Executive Law article 27. Contrary to Barton’s claim, APA has authority to issue a five-year permit, and a permit term limited to five years is particularly warranted in light of Barton’s failure to provide critical engineering information regarding the massive on-site waste disposal facility it proposes to significantly expand.

**The “White Paper” is Unsigned and Therefore Inadmissible**

Barton’s submission, entitled, “The Life of Mine Standard for Permitting Mining Projects in New York State,” is undated and unattributed. Despite being a legal memorandum that cites statutes and case law, asserts legal interpretations and makes legal arguments, the submission bears no attorney or law firm signature and provides no information concerning its authorship. On this ground alone, the anonymous submission is inadmissible and should be rejected.

While this matter is not before a court, the Rules of the Chief Administrator of the Courts are instructive and provide:

Signature. Every pleading, written motion, and other paper, served on another party or filed or submitted to the court shall be signed by an attorney . . . with the name of the attorney . . . clearly printed or typed directly below the signature. Absent good cause shown, the court shall strike any unsigned paper if the omission of the signature is not corrected promptly after being called to the attention of the attorney . . . .

22 NYCRR § 130-1.1(a). The Rules make clear that the signature requirement is crucial to prevent fraudulent, frivolous or inaccurate filings:

Certification. By signing a paper, an attorney . . . certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) the presentation of the paper or the contentions therein are not frivolous . . . and (2) where the paper is an initiating pleading, (i) the matter was not obtained through illegal conduct . . . and (ii) the matter was not obtained in violation of {the rule prohibiting unsolicited communications with a potential client).

*Id.* § 130-1.1(b).

Although these rules apply to judicial proceedings, it is standard practice for submissions—legal or otherwise—to an administrative agency to comply with the signature requirement for the same reason: to ensure the legitimacy of the submission. This requirement has been adopted by APA and applies to all submissions for major project permit applications, including Barton’s mine expansion application. *See*, APA Application for Major Projects General Information Request at 9 (requiring person signing a major project application to affirm that “I have personally examined and am familiar with the information submitted in this application, including all attachments. I believe this information to be true, accurate and complete. in addition, in the case of any project sponsor corporation, limited liability corporation, partnership or other legal entity, I also affirm that I am authorized to submit this application on behalf of that entity”). Because Barton’s “White Paper” submission is unsigned and thus fails to comply with both standard practice for legal submissions and with APA application signing requirements, APA should reject the submission and disregard it.

Even if APA chooses to consider Barton’s submission, it is legally flawed and APA should not alter its position regarding the five-year permit term.

### **DEC’s Mining Permit Jurisdiction Does Not Eliminate or Truncate APA Review**

Barton’s submission objects to APA “approving at this time only the early phase of the project, with subsequent phases subject to new permit application requirements and *de novo* review.” White Paper at 1. Barton argues that APA’s approach is “legally impermissible under the Mined Land Reclamation [Law]. . . [and is] at odds with the Department of Environmental Conservation’s (“DEC’s”) longstanding Life of Mine Review Policy (“LOM Policy”).” *Id.* Barton goes on to claim that Environmental Conservation Law § 23-2703(2) vests “exclusive jurisdiction in the DEC to regulate mining operations and reclamation activities” and that “APA is without authority to substantively regulate mining activities or reclamation.” *Id.* Barton’s argument is contradicted by

the plain language of the APA Act, inconsistent with prior mining permits issued by APA, and not supported by the case law interpreting the Mined Land Reclamation Law (“MLRL”).

Barton’s planned major expansion of its Ruby Mountain Mine, located on lands classified Rural Use, Resource Management and Industrial Use by the Adirondack Park Land Use and Development Plan Map, is a Class A regional project as defined by the APA Act and therefore requires an APA permit. Executive Law §§ 810(e)(1)(d), 810(e)(12), 810(e)(17); 810(f)(1), 810(f)(8). APA cannot lawfully issue the permit unless it makes a finding that “[t]he project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project.” *Id.* § 809(10)(e); *Matter of Jorling v. Adirondack Park Agency*, 214 AD3d 98, 105 (3d Dept. 2023 (in reviewing proposed marina expansion, “APA was required to . . . determine” whether findings required by APA Act § 809(10)(e) could be made before issuing permit). Barton does not—and cannot—square its claim that APA’s review “is preempted by the MLRL” with APA’s statutory duty to make the findings required as a prerequisite to issuing a Class A regional project permit for the proposed mine expansion. White Paper at 1.

Barton’s reliance on *Hunt Bros., Inc. v. Glennon*, 81 NY2d 906 (1993) is misplaced because that decision refutes, rather than supports, Barton’s preemption argument. Indeed, in *Hunt Bros.* the Court of Appeals specifically rejected the mining company’s argument that APA’s regulation of mining activities is preempted by the MLRL:

The statute creating and empowering the APA is aimed at establishing a superagency to regulate development in the Adirondack Park region, which the Legislature has singled out for special protection because of its unique environmental significance . . . *Inasmuch as the APA's mission concerns the broad area of land use planning within the Adirondack Park district, its enabling statute is not a law "relating to the extractive mining industry." Consequently, ECL 232703 . . . does not deprive the agency of all jurisdiction to regulate petitioner's activities.*

81 NY2d at 909; (emphasis added). Moreover, as noted by the Court, there is concurrent “no ‘bureaucratic competition’ or ‘confusion’ over the respective roles of the APA and the DEC regarding the regulation of mining operations . . . within the Adirondack Park” because “the DEC and the APA, as well as the State Department of Health, have been party to a Memorandum of Understanding under which the agencies have agreed to coordinate their respective regulatory responsibilities with regard to projects in the Park.” 81 NY2d at 909-910.

Barton’s preemption argument is also contradicted by previous permits issued by APA for mining operations. To cite just one recent example, the Red Rock Quarry permit issued by APA in January 2022, included permit conditions regarding lighting; signs; vegetative cutting; location and depth of mining operations; days and hours when drilling, blasting and crushing are permitted; the hours when truck traffic is permitted; the number of truck trips allowed per day; and reclamation of the site. In fact, Barton’s prior APA permits included conditions governing maximum final grades for

all earth slopes; riser details for settling basin outlets; stormwater runoff interceptors; restrictions on the waste pile height and size; revegetation requirements for the waste pile; blasting restrictions; restrictions on water withdrawals; erosion and sedimentation control; dust control; wetland protection and mitigation; removal of trees and vegetation; control of noise impacts; and truck traffic. *See, e.g.*, APA Permit Nos. 79-140, 79-356, 81-20, 87-39.

Barton's additional argument that APA's approach violates DEC's purported Life of Mine Policy is wrong on several counts. First, Barton provides no citation to the alleged policy and it apparently does not exist; there is no "Life of Mine" policy included on DEC's website, either as a DEC policy or Division of Mineral Resources technical guidance. In fact, the only reference to the purported policy is in a 36 year-old court decision, which referred to DEC's "so-called 'Life of Mine Review Policy'" as being "described in a DEC internal memorandum." *Guptill Holding Corp. v. Williams*, 140 AD2d 12, 15-17 (3d Dept. 1988). Thus, it is doubtful that the policy cited by Barton exists.

Second, even if a Life of Mine policy exists, it is a DEC internal policy, not an APA policy, and thus is not binding on APA. Nor is the policy binding even on DEC. *See Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency*, 161 AD3d 169 at 177-178 (3d Dept. 2018) ("An administrative agency's internal guidelines are not binding rules or regulations because they do not impose fixed, general principle(s) to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers").

### **APA's Phased Approval Approach is Consistent With its Regulations and With APA's Prior Permitting of Barton's Operations**

In any event, APA's approach is consistent with its own regulations for phased projects and is warranted considering Barton's failure to provide basic information about the long-term impacts of its proposed mine expansion. The APA regulations provide that "[p]ermits may be granted for the development of large scale projects or other projects to be undertaken in sections, subject to conditions relating to improvements and services for and completion of the total project that the agency deems reasonable and necessary." 9 NYCRR § 572.6(a). The regulations specifically provide for APA's phase-by-phase approval of large scale projects: "An agency decision *relating to a section of a project* shall contain findings and conclusions with respect to the likely impact of the entire project and its compliance with section 809(9) or 809(10) of the Adirondack Park Agency Act." *Id.* § 572.6(d); (emphasis added). Indeed, APA's prior Class A regional project permits issued to Barton adopted the same phased approval approach. *See* APA Permit No. 79140 at 1 (providing conceptual review approval of mining plan "subject to re-examination based on final design"); APA Permit No. 79-356 at 6 ("The project sponsors are proposing the initial phase of a mineral extraction use on a 580 acre parcel of land on the slopes of Ruby Mountain and Big Thirteenth Lake Mountain . . . The project sponsor[s] will be submitting at least one additional Application for Project Permit for the mineral extraction use . . ."); APA Permit No. 81-20 at 9

(“This permit authorizes the final phase as described in the project sponsor’s Application for Project Permit received October 22, 1979”).<sup>1</sup>

APA’s phased approval approach is necessary because of Barton’s failure to provide crucial information concerning, among other things, its massive on-site solid waste disposal facility. As stated in the expert report submitted as part of PROTECT’s January 10, 2024 comments:

The permit application document refers to the October 30, 2023 geotechnical assessment letter by Knight Piesold as a “certification”. The geotechnical letter is clearly titled as an “assessment” and explicitly states in the conclusions that the assessment should not be taken as an engineering approval. The Knight Piesold assessment indicates that the tailings storage facility is likely to be geotechnically feasible, but is contingent on several key assumptions. Several assumptions are related to means and methods of site preparation and material placement with quality control testing. The authors rightly state that a qualified geotechnical engineer needs to be closely engaged with ongoing investigations, monitoring, and redesign, if necessary. *The application documents provide insufficient detail about the ongoing investigation and monitoring program and do not clearly designate who will be managing, overseeing, and certifying the program. A design of the expansion needs to be included in the application documents that is stamped by a qualified geotechnical engineer licensed in the State of New York.*

Report of Sterling Environmental Engineering, P.C. (Jan. 10, 2024) at 4; (emphasis added).

Rather than complying with APA’s reasonable request that Barton have its waste pile submission signed by a New York-licensed professional engineer, Barton protested that “[w]e are not aware of any past mining application/permit in the Adirondack Park that had a similar requirement” and demanded that APA “advise us of the reasoning for this requirement.” Email from Bernard Melewski, Esq. to Corrie Magee (APA) re: Follow Up to Your Call (Jan. 19, 2024). Barton had the same response to APA’s request that its noise analysis be signed by a New York-licensed engineer. *Id.*

### **APA’s Approach is Not Inconsistent With SEQRA**

Lastly, Barton’s claim that APA’s phased approval approach “is fundamentally inconsistent with the policies and substantive requirements of SEQRA,” White Paper at 5, is meritless and utterly at odds with its argument that APA lacks any substantive environmental review authority over the Barton mine expansion. Barton’s white paper correctly notes that projects subject to APA permit requirements are exempt from SEQRA because “the APA’s mandates under Executive Law

---

<sup>1</sup> APA has taken a phased approach to the ongoing review of other mineral extraction/industrial use project applications, such as the Peckham Materials Corporation project in the Town of Chester mentioned by Barton. APA issued a permit to Peckham on April 4, 2023 (APA Permit 2023-0016) that authorizes mineral extraction, and other activities, and expires in November 2028, unless an application for a new permit term is received prior to that time. See <https://apa.ny.gov/Projects/PermitsIssued/P2023-0016-Permit-Final.pdf>.

[section] 809 are more protective of the environment than is SEQRA. *Id.* at 5-6, citing *Association for Protection of the Adirondacks v. Town Bd. of Town of Tupper Lake*, 64 AD3d 825, 826-27 (3d Dept. 2009). Yet Barton simultaneously claims that “[t]he MLRL expressly limits the scope of the APA’s jurisdiction over mining projects, vesting exclusive jurisdiction in the DEC to regulate mining operations and reclamation activities.” *Id.* at 2. Thus, Barton is seeking, in essence, a complete exemption from SEQRA-type review of its major expansion by claiming that APA has no authority to conduct an environmental review of its project (and to impose appropriate permit conditions to mitigate or avoid adverse environmental impacts) but at the same time claiming exemption from SEQRA due to APA’s permit jurisdiction (that requires a greater-than-SEQRA review of environmental impacts). APA should reject Barton’s legally flawed, self-serving and circular claims. APA should reject Barton’s legally flawed, self-serving and circular claims.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on the Barton Mines application.

Sincerely,



Christopher Amato  
Conservation Director and Counsel

Cc: Beth Magee  
New York State Department of Environmental Conservation  
Region 5  
232 Golf Course Rd.  
Warrensburg, NY 12885