



(715) 726-7920
www.co.chippewa.wi.us

711 North Bridge Street
Chippewa Falls, WI 54729-1876

January 31, 2020

Leon Boland & Katherine Stahl
N7607 1010th Street
Elk Mound, WI 54739

RE: Decision on Review – Northern Sands, LLC

Dear Mr. Leon Boland & Ms. Katherine Stahl:

Pursuant to ch. 60.09 Wis. Stats. please find attached the Chippewa County Department of Land Conservation & Forest Management's (LCFM) "Decision on Review" of your request for a review of determination.

It is your right to appeal of this decision. State Administrative Code NR 135.30(1) provides the legal authority for you to appeal if you so choose. NR 135.30(1) reads as follows:

"NR 135.30 Review of permit decision.

(1) COUNTY OR MUNICIPAL PERMIT DECISION. Notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats., any person who meets the requirements of s. 227.42 (1), Stats., may obtain a contested case hearing under s. 68.11, Stats., on a county or municipal regulatory authority's decision to issue, deny or modify a nonmetallic mining reclamation permit.

Chapter 68.10 of Wisconsin State Statutes provides the timeframe and process that must be followed for an administrative appeal. Ch 68.10 Wis. Stats. reads as follows:

"68.10 Administrative appeal.

(1) FROM INITIAL DETERMINATION OR DECISION ON REVIEW.

- (a) If the person aggrieved did not have a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may appeal under this section from the decision on review and shall follow the procedures set forth in ss. 68.08 and 68.09.
- (b) If the person aggrieved had a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may elect to follow the procedures provided in ss. 68.08 and 68.09, but is not entitled to appeal under this section unless granted by the municipal authority. The person may, however, seek review under s. 68.13.

(2) TIMEWITHINWHICH APPEAL MAY BE TAKEN UNDER THIS SECTION.

Appeal from a decision on review under s. 68.09 shall be taken within 30 days of notice of such decision.

- (3) HOW APPEAL MAY BE TAKEN. An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal."

Section 2-429 of the Chippewa County Code of Ordinances also provides the legal authority for you to appeal if you so choose, and the timeframe and process that must be followed for an administrative appeal. Sec. 2-249 of the Chippewa County Code of Ordinances reads as follows:

"Sec. 2-429. Administrative appeal.

(a) *From initial determination or decision on review.*

(1) If the person aggrieved had a hearing substantially in compliance with section 2-430 when the initial determination was made, he may elect to follow sections 2-426 through 2-428 but is not entitled to a further hearing under section 2-430 unless granted by the governmental authority. The person aggrieved, however, may seek judicial review under section 2-432.

(2) If the person aggrieved did not have a hearing substantially in compliance with section 2-430 when the initial determination was made, he shall follow sections 2-426 through 2-428 and may appeal under this section from the decision made under section 2-428.

(b) *Time within which appeal may be taken under this section.* Appeal from a decision on review under section 2-428 may be taken within 30 days of notice of such decision.

(c) *How appeal may be taken.* An appeal under this section may be taken by filing with or mailing to the office or person designated in the governmental authority's decision on review a written notice of appeal.

If you choose to appeal this "Decision on Review" you must file or mail a written notice of appeal to the Chippewa County Department of Land Conservation & Forest Management within thirty (30) days of notice of this Decision on Review (on or before March 2, 2020).

Sincerely,



Ketty Clow, P.E.
Project Engineer

c: Tom Gapinske, Northern Sands
Dan Masterpole, County Conservationist
Todd Pauls, Asst. Corp Counsel

CHIPPEWA COUNTY'S RESPONSE TO REQUEST FOR REVIEW OF ADMINISTRATIVE DECISION TO ACCEPT A BASELINE HYDROLOGIC INVENTORY AND A SITE SPECIFIC HYDROLOGIC ANALYSIS FROM NORTHERN SANDS, LLC AND TO ACCEPT THESE DOCUMENTS AS MEETING PERMIT CONDITIONS 4.A AND 4.B. AS ESTABLISHED IN THE ALBERTVILLE VALLEY NONMETALLIC MINE PERMIT #2015-01.

Background

Chippewa County, acting through the Department of Land Conservation & Forest Management ("LCFM"), is the designated regulatory authority responsible for administering a County non-metallic mining program and reclamation ordinance, adopted under the authority of WI Administrative Code NR 135.32.

On November 22, 2019, Leon Boland and Katherine Stahl ("Boland/Stahl") filed a formal request with supporting documents, under the authority of NR 135.30, to review a permit decision by LCFM to accept a baseline hydrologic inventory and a site specific hydrologic analysis submitted by Northern Sands of Wisconsin, LLC ("Northern Sands") as required to meet the permit conditions of the Nonmetallic Mining Reclamation Permit #2015-01 (the "Initial Determination"). That request with supporting documents is provided as Exhibit I.

On December 16, 2019, LCFM and Bohland/Stahl mutually agreed to an extension of the time for review of determination so that a decision on review will be provided no later than January 31, 2020.

LCFM has reviewed the material submitted by the aggrieved persons has prepared this response. Several documents supporting this response are provided as the following exhibits:

Exhibit I - Aggrieved Persons email with supporting documents

Exhibit II - Permit #2015-01 with conditions

Exhibit III - Baseline hydrologic inventory and Site specific hydrologic analysis with clarifying documents

Exhibit IV- Department administrative guidance letter dated November 1, 2018

In conducting the review, LCFM has compiled and evaluated the file record and has reviewed the administrative decision to accept the baseline hydrologic inventory with clarifying documents and the site specific hydrologic analysis with clarifying documents as meeting the Chippewa County Non-Metallic Mining Reclamation Permit Conditions 4.a and 4.b as established in Permit #2015-15 for the Albertville Valley Mine.

The aggrieved persons have outlined six points of concern as the basis for the request for administrative review. LCFM's response to the six points, and the facts and findings of this review are provided herein:

1. AGGRIEVED PERSONS CONCERN

The request for reconsideration of an administrative decision as filed states:

“In the September 13th and the August 7th NSW letters, Tom Gapinske and Dr. Brian Mahoney wrote that a full hydrologic inventory of all required Phase 1 adjacent properties had been completed. This is not accurate. We hired Dr. David Zaber to accompany Dr. Mahoney and Ms. Ann Key during their visit to our property and the Wagner property. He was asked to observe their inventory procedures and not interfere in any way. Dr. Zaber has advised us that Dr. Mahoney and Ms. Key did not visit all of our forty that was required by your office for this inventory (see Dr. Zaber’s attached report). Rather, they walked along the pipeline in the middle of our forty. They did not discover, delineate, quantify, or record a single seep anywhere on the forty although we know of at least two. As you know we were concerned about the limited amount of our land you required NSW to study. We are dismayed that they did not even thoroughly study the required forty acres.”

COUNTY RESPONSE

The finding of facts as considered by LCFM are as follows:

Whereas, Permit condition 4.a. is required to be met by the operator.

Whereas, Permit condition 4.a. reads as follows:

“4. Stream, Stream Corridor & Wetland Protection

a. A baseline hydrologic inventory shall be conducted to define the location of seeps, springs, wetlands, and surface waters located within the permitted mine boundary, and those located on adjacent properties.

(i) This inventory shall be based upon an examination of available resource maps and shall be verified through a general field assessment of the mine site, and adjacent properties if access to the adjacent properties is allowed.

Whereas, further administrative guidance contained in correspondence from LCFM to Northern Sands dated November 1, 2018 states as follows:

“...it is necessary for Northern Sands WI to conduct the full hydrologic inventory to determine the location of all seeps, springs, wetlands, and surface waters on all properties adjacent to the areas that will be excavated in Phase 1. The properties to be evaluated for Phase 1 are shown in Attachment 1.”

Whereas, LCFM has reviewed the baseline hydrologic inventory with clarifying documents as submitted by Northern Sands.

Whereas, LCFM has evaluated the information provided to determine if it meets the requirements of the administrative guidance letter dated November 1, 2018 and Chippewa County Non-Metallic Mining Reclamation Permit Condition 4.a.

Now therefore, the Department of Land Conservation and Forest Management concludes that:

1. The baseline hydrologic inventory was conducted as prescribed to meet Permit Condition 4.a.
2. The methodology used to conduct the baseline hydrologic inventory included the use of available resource maps, and was verified through a general field assessment of the mine site and adjacent properties to meet Permit Condition 4.a.(i).
3. A hydrologic inventory was completed on all of the properties as designated in Attachment 1.

2. AGGRIEVED PERSONS CONCERN

The request for reconsideration of an administrative decision as filed states:

“Four years ago when permit 2015-01 was issued we requested a review of determination. One of our concerns was the possibility of seeps, springs, and wetland depletion altering or even perhaps eliminating the flow of the small Elk Creek feeder stream that originates on our property. This stream flows from north to south and originates immediately west of the ridge that is included in the mine footprint and contains the single forty you required NSW to study and inventory. We have suggested several times that not only the required forty but the forty immediately south of it plus the east half of each forty directly west of those two be studied to obtain base line flow parameters for that stream. It is our contention that all of the seeps and springs within that 100 acres need to be identified, located and quantified to make the study meaningful. In our opinion none of this has been done.”

COUNTY RESPONSE

The finding of facts as considered by LCFM are as follows:

Whereas, Permit #2015-01 permit conditions 4.a.(i) is required to be met by the operator.

Whereas, further administrative guidance contained in correspondence from LCFM to Northern Sands dated November 1, 2018 states as follows:

“...it is necessary for Northern Sands WI to conduct the full hydrologic inventory to determine the location of all seeps, springs, wetlands, and surface waters on all properties adjacent to the areas that will be excavated in Phase 1. The properties to be evaluated for Phase 1 are shown in Attachment 1.”

Whereas, LCFM has reviewed the baseline hydrologic inventory with clarifying documents as submitted by Northern Sands.

Whereas, LCFM has evaluated the information provided to determine if it meets the requirements of the administrative guidance letter dated November 1, 2018 and Chippewa County Non-Metallic Mining Reclamation Permit Condition 4.a.

Now therefore, the Department of Land Conservation and Forest Management concludes that:

1. The baseline hydrologic inventory was conducted as prescribed to meet Permit Condition 4.a.
2. The methodology used to conduct the baseline hydrologic inventory included the use of available resource maps, and was verified through a general field assessment of the mine site and adjacent properties to meet Permit Condition 4.a.(i).
3. A hydrologic inventory was completed on all of the properties as designated in Attachment 1.

3. AGGRIEVED PERSONS CONCERN

The request for reconsideration of an administrative decision states:

“Mr. Gapinske and Dr. Mahoney’s September 13th letter states “surface drainage features are the predominate control for the localized wetland development and do not originate from any continuous subsurface feature or layer”. This is not an accurate statement. Ridges on our property have several seeps that result from subsurface layers. Dr. Madeline Gotkowitz visited our land and noted the presence of several seeps on the west side of the very ridge that is part of the mine footprint (see Dr. Gotkowitz’s attached letter).”

COUNTY RESPONSE

The finding of facts as considered by LCFM are as follows:

Whereas, Permit #2015-01 permit condition 4.b. (i) and (ii) are required to be met by the operator.

Whereas, Permit condition 4.b. (i) and (ii) reads as follows:

“b. A site specific hydrologic analysis shall be conducted by a Professional Hydrologist or Professional Geologist to evaluate and assess the potential for mining operations and reclamation activities to affect naturally occurring seeps, springs, wetlands, and surface waters as documented through the hydrologic inventory required under condition 4.a.

- (i) This assessment shall be conducted for each phase of the mine site prior to beginning any mining activities in that mine phase.
- (ii) This assessment shall document and describe the source of the water creating the hydrologic condition and shall assess the extent to which these features may be impacted by mining operations and reclamation activities. It shall also specify mitigation measures that can used to reduce any potential impacts to seeps, springs, wetlands, and surface waters.”

Whereas, LCFM has reviewed the site specific hydrologic analysis with clarifying documents as submitted by Northern Sands.

Whereas, LCFM has evaluated the information provided to determine if it meets the requirements the Chippewa County Non-Metallic Mining Reclamation Permit Condition 4.b.

Now therefore, LCFM concludes that:

1. The site specific hydrologic analysis was conducted by a Professional Geologist Dr. J. Brian Mahoney, PG. Dr. Mahoney evaluated and assessed the potential for mining operations and reclamation activities to affect naturally occurring seeps, springs, wetlands, and surface waters as documented through the hydrologic inventory and required under condition 4.a. to meet Permit Condition 4.b.
2. The assessment was completed for Phase 1 prior to beginning any mining activities in that mine phase to meet Permit Condition 4.b. (i).
3. The site specific hydrologic analysis with clarifying documents documented and described the source of the water creating the hydrologic condition and assessed the extent to which these features may be impacted by mining operations and reclamation activities to meet Permit Condition 4.b. (ii).
4. The site specific hydrologic analysis with clarifying documents specified mitigation measures that will be used to reduce any potential impacts to seeps, springs, wetlands, and surface waters to meet Permit Condition 4.b. (ii).

4. AGGRIEVED PERSONS CONCERN

The request for reconsideration of an administrative decision states:

“Dr. Mahoney has outlined the surficial drainage but has not at all addressed the impact on the capture zone once the excavation of Phase 1a and Phase 1b occur. We have been told by Dr. George Kraft that the change in capture zone as a result of excavation can be calculated. None of this is included in the NSW analysis. Again, one of the major reasons we have been concerned about the mine excavation is that altering the seeps might impact or even dry up the perennial Elk Creek feeder stream on our property immediately west of the area in question.”

COUNTY RESPONSE

The finding of facts as considered by LCFM are as follows:

Whereas, Permit #2015-01 permit condition 4.b is required to be met by the operator.

Whereas, Permit condition 4.b. reads as follows:

“b. A site specific hydrologic analysis shall be conducted by a Professional Hydrologist or Professional Geologist to evaluate and assess the potential for mining operations and reclamation activities to affect naturally occurring seeps, springs, wetlands, and surface waters as documented through the hydrologic inventory required under condition 4.a.”

Whereas, further administrative guidance contained in correspondence from LCFM to Northern Sands dated November 1, 2018 states as follows:

“Upon completing the updated hydrologic inventory and sub-watershed delineation, Northern Sands WI must reevaluate the potential for mining operations to affect seeps, springs, wetlands, and surface waters, including the following:

- Hydrologic features located at or near elevation 1100 ft MSL, as they may be affected by removing material above that elevation.
- Hydrologic features located at or near the elevation of the regional water table, mapped at approximately 1000 ft MSL, as they may be affected by the disruption of surface water flow during mining operations.

Whereas, LCFM has reviewed the site specific hydrologic analysis with clarifying documents as submitted by Northern Sands.

Whereas, LCFM has evaluated the information provided to determine if it meets the requirements of the administrative guidance letter dated November 1, 2018 and Chippewa County Non-Metallic Mining Reclamation Permit Condition 4.b.

Now therefore, the Department of Land Conservation and Forest Management concludes that:

1. The site specific hydrologic analysis was conducted by a Professional Geologist Dr. J. Brian Mahoney, PG. Dr. Mahoney evaluated and assessed the potential for mining operations and reclamation activities to affect naturally occurring seeps, springs, wetlands, and surface waters as documented through the hydrologic inventory and required under condition 4.a. to meet Permit Condition 4.b.
2. The updated hydrologic inventory and sub-watershed delineation reevaluated the the potential for mining operations to affect seeps, springs, wetlands, and surface waters, including the following: hydrologic features located at or near elevation 1100 ft MSL, as they may be affected by removing material above that elevation, and hydrologic features located at or near the elevation of the regional water table, mapped at approximately 1000 ft MSL, as they may be affected by the disruption of surface water flow during mining operations.
3. Determination of the capture zone was not a requirement of Permit Condition 4.a. (i) or any administrative guidance.

5. AGGRIEVED PERSONS CONCERN

The request for reconsideration of an administrative decision as filed states:

“The NSW report indicates that adjacent wetlands’ viability is principally dependent upon land use of adjacent parcels west of the NSW permitted area. We don’t doubt that our and Wagners’ land use would impact the wetlands, however, NSW’s management of surficial drainage is not their only possible impact to the neighboring wetlands and seeps. Nowhere in the study do the study authors acknowledge that perched water tables or aquitards even exist in our ridge or other ridges, much more the authors’ consideration of their contribution to cold water feeder stream supply. We contend that this is a regional issue that affects significant areas surrounding the proposed mine in question.”

COUNTY RESPONSE

The finding of facts as considered by LCFM are as follows:

Whereas, Permit #2015-01 permit condition 4.b. (i) and 4.b. (ii) are required to be met by the operator.

Whereas, Permit condition 4.b. (i) and 4.b. (ii) reads as follows:

“b. A site specific hydrologic analysis shall be conducted by a Professional Hydrologist or Professional Geologist to evaluate and assess the potential for mining operations and reclamation activities to affect naturally occurring seeps, springs, wetlands, and surface waters as documented through the hydrologic inventory required under condition 4.a.

- (i) This assessment shall be conducted for each phase of the mine site prior to beginning any mining activities in that mine phase.
- (ii) This assessment shall document and describe the source of the water creating the hydrologic condition and shall assess the extent to which these features may be impacted by mining operations and reclamation activities. It shall also specify mitigation measures that can used to reduce any potential impacts to seeps, springs, wetlands, and surface waters.”

Whereas, LCFM has reviewed the site specific hydrologic analysis with clarifying documents as submitted by Northern Sands.

Whereas, LCFM has evaluated the information provided to determine if it meets the requirements of the administrative guidance letter dated November 1, 2018 and Chippewa County Non-Metallic Mining Reclamation Permit Condition 4.b.

Now therefore, LCFM concludes that:

1. The site specific hydrologic analysis was conducted by a Professional Geologist Dr. J. Brian Mahoney, PG. Dr. Mahoney evaluated and assessed the potential for mining operations and reclamation activities to affect naturally occurring seeps, springs, wetlands, and surface waters as documented through the hydrologic inventory and required under condition 4.a. meeting Permit Condition 4.b.
2. The assessment was completed for Phase 1 prior to beginning any mining activities in that mine phase meeting Permit Condition 4.b. (i)
3. The site specific hydrologic analysis with clarifying documents documented and described the source of the water creating the hydrologic condition and assessed the extent to which these features may be impacted by mining operations and reclamation activities to meet Permit Condition 4.b. (ii).
4. The site specific hydrologic analysis with clarifying documents specified mitigation measures that will be used to reduce any potential impacts to seeps, springs, wetlands, and surface waters to meet Permit Condition 4.b. (ii).

6. AGGRIEVED PERSONS CONCERN

The request for reconsideration of an administrative decision as filed states:

“The September 13th NSW report refers to the surficial waters flowing under 13th Street through “the culvert”. It should be noted that there are two 24 inch culverts located 32 feet apart under 13th Street. Both of those culverts were observed running absolutely full and flooding a substantial portion of the proposed processing area on July 6, 2015. Lee Boland observed the flood waters flowing north into 18 Mile Creek. You will note that NSW indicates the run off goes only into Elk Creek. If they can’t see these obvious surficial things, how confident can we be with their study findings?”

COUNTY RESPONSE

The finding of facts as considered by LCFM are as follows:

Whereas, Permit #2015-01 permit condition 4.b. (ii) is required to be met by the operator. Permit condition 4.b. (ii) reads as follows:

“(ii) This assessment shall document and describe the source of the water creating the hydrologic condition and shall assess the extent to which these features may be impacted by mining operations and reclamation activities. It shall also specify mitigation measures that can be used to reduce any potential impacts to seeps, springs, wetlands, and surface waters.”

Whereas, further administrative guidance contained in correspondence from LCFM to Northern Sands dated November 1, 2018 states as follows:

“Assessment includes multiple mitigation techniques for increasing infiltration post-construction and preserving surface drainage divides.

- o The assessment shall include a sub-watershed delineation of each hydrologic feature (or set of features) in order to determine the water source and the approximate percent contribution from each water source to the feature. The delineation shall be used to assess the extent to which each feature may be impacted by mining operations.”

Whereas, LCFM has reviewed the site specific hydrologic analysis with clarifying documents as submitted by Northern Sands.

Whereas, LCFM has evaluated the information provided to determine if it meets the requirements of the administrative guidance letter dated November 1, 2018 and Chippewa County Non-Metallic Mining Reclamation Permit Condition 4.b.

Now therefore, the Department of Land Conservation and Forest Management concludes that:

1. The site specific hydrologic analysis with clarifying documents document describe the source of the water creating the hydrologic condition and shall assess the extent to which these features may be impacted by mining operations and reclamation activities. The site specific hydrologic analysis with clarifying documents indicate mining activities and mitigation measures reducing any potential impacts to seeps, springs, wetlands, and surface waters to meet Permit Condition 4.b. (ii).
2. The site specific hydrologic analysis with clarifying documents document delineate of each hydrologic feature or set of features to determine the water source and the approximate percent contribution from each water source to the feature.
3. Observation from the aggrieved persons disagree with the professional statement of Dr. J Brian Mahoney.

The observation of the aggrieved persons will be provided to Northern Sands and will be placed on file. This observation shall be addressed as the stormwater plan document is developed for the permitted mine.

CONCLUSION

LCFM has compiled and evaluated the file record and has reviewed the LCFM's Initial Determination to accept the baseline hydrologic inventory with clarifying documents and the site specific hydrologic analysis with clarifying documents as meeting the Chippewa County Non-Metallic Mining Reclamation Permit Conditions 4.a and 4.b as established in Permit #2015-15 for the Albertville Valley Mine.

Based upon this review and evaluation, LCFM finds that:

1. The information provided is adequate to support the administrative decision to accept the baseline hydrologic inventory with clarifying documents.
2. The information provided is adequate to support the administrative decision to accept the site specific hydrologic analysis with clarifying documents.

From these facts and finding, LCFM finds the requirements of the Chippewa County Non-Metallic Mining Reclamation Permit Conditions 4.a. and 4.b. have been satisfactorily met, and therefore affirms LCFM's Initial Determination.

APPEAL PROCESS

It is your right to appeal of this Decision on Review. State Administrative Code NR 135.30(1) provides the legal authority for you to appeal if you so choose. NR 135.30(1) reads as follows:

“NR 135.30 Review of permit decision.

(1) COUNTY OR MUNICIPAL PERMIT DECISION. Notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats., any person who meets the requirements of s. 227.42 (1), Stats., may obtain a contested case hearing under s. 68.11, Stats., on a county or municipal regulatory authority's decision to issue, deny or modify a nonmetallic mining reclamation permit.

Chapter 68.10 of Wisconsin State Statutes provides the timeframe and process that must be followed for an administrative appeal. Ch 68.10 Wis. Stats. reads as follows:

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(b) If the person aggrieved had a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may elect to follow the procedures provided in ss. 68.08 and 68.09, but is not entitled to appeal under this section unless granted by the municipal authority. The person may, however, seek review under s. 68.13.

(2) TIMEWITHINWHICH APPEAL MAY BE TAKEN UNDER THIS SECTION.

Appeal from a decision on review under s. 68.09 shall be taken within 30 days of notice of such decision.

(3) HOW APPEAL MAY BE TAKEN. An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal.”

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“Sec. 2-429. Administrative appeal.

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(1) If the person aggrieved had a hearing substantially in compliance with section 2-430 when the initial determination was made, he may elect to follow sections 2-426 through 2-428 but is not entitled to a further hearing under section 2-430 unless granted by the governmental authority. The person aggrieved, however, may seek judicial review under section 2-432.

(2) If the person aggrieved did not have a hearing substantially in compliance with section 2-430 when the initial determination was made, he shall follow sections 2-426 through 2-428 and may appeal under this section from the decision made under section 2-428.

(b) *Time within which appeal may be taken under this section.* Appeal from a decision on review under section 2-428 may be taken within 30 days of notice of such decision.

(c) *How appeal may be taken.* An appeal under this section may be taken by filing with or mailing

to the office or person designated in the governmental authority's decision on review a written notice of appeal.

If you choose to appeal this “Decision on Review” you must file or mail a written notice of appeal to the Chippewa County Department of Land Conservation & Forest Management within thirty (30) days of notice of this Decision on Review (on or before March 2, 2020).