

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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In the Matter of Violations of Article 23, Title 27 of the New York State Environmental Conservation Law and of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Parts 420 to 425, by

**CONSENT
ORDER**

**CASE NO.
R7-20121115-92**

Town of Windsor
Windsor (T)
Broome County, New York,

Respondent
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WHEREAS:

1. The New York State Department of Environmental Conservation (the “Department”) is responsible for the administration and enforcement of New York State Environmental Conservation Law (“ECL”) Article 23, Title 27 and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”) Parts 420 to 425, promulgated pursuant thereto.

2. The Town of Windsor is a municipal corporation with administrative offices located at 124 Main Street, Windsor, Broome County, New York 13865 (“Respondent”).

3. On February 6, 2007, the Department issued DEC Mining Permit ID Number 7-0350-00012/00001 (the “Permit”) to Respondent to operate a mine known as the Town of Windsor Gravel Pit, located on Mountain Road in the Town of Windsor, Broome County, New York and identified by Tax Parcel ID # 151.03-1-6, Mined Land ID Number 70117 (the “Mine” or the “Site”). The Permit expired on January 31, 2012.

4. The Permit authorizes Respondent to conduct mining activity on 16 acres of land during the Permit term, within a 16 acre life-of-mine facility.

5. Mined Land Reclamation Permit Condition 19 of the Permit states: “**No Deviation From Approved Plan** The permittee shall not deviate or depart from the approved mined land use plan without approval by the Department of an alteration or modification thereto.” The Department approved Plans are detailed under Mined Land Reclamation Permit Conditions 1 and 2 of the Permit.

6. Mined Land Reclamation Permit Condition 4 of the Permit states: “**Minimum 25’ Separation From Property Line** No mining activity of any kind, including clearing and grubbing, shall occur within 25 feet of any adjacent property line or right-of-way. When mining is conducted lower than the adjacent property, the distance from the floor of the mine to the nearest property line shall be no closer than 25 feet plus 1 ½ times the depth of the excavation. ”

7. General Condition 4 of the Permit states: “**Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Mined Land Reclamation.”

8. ECL Section 23-2705(8) and 6 NYCRR Section 420.1(k) define “mining” to mean “the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make the suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location.”

9. ECL Section 23-2705(7) and 6 NYCRR Section 420.1(j) defines “mineral” to mean “any naturally formed, usually inorganic, solid material located on or below the surface of the earth.”

10. ECL Section 23-2711(1) and 6 NYCRR Section 421.1(a) require that a mining permit be obtained by any person who mines or proposes to mine, from a mine site, more than one thousand (1,000) tons or seven hundred fifty (750) cubic yards of minerals, whichever is

less, from the earth within twelve (12) successive calendar months.

11. ECL Section 23-2711(10) requires that all mining activity shall be in accordance with a permit granted by the Department, and 6 NYCRR Section 421.1(c) requires that all permits shall be conditioned upon compliance with a mined land-use plan approved by the Department.

12. ECL Section 23-2713(1) and 6 NYCRR Section 422.1(a) require that all mining and reclamation activities on the affected land shall be conducted in accordance with a mined land-use plan approved by the Department. The mined land-use plan shall consist of a mining plan and a reclamation plan.

13. ECL Section 23-2711(11) and 6 NYCRR Section 421.1(e) require permit renewal applications be submitted to the Department at least thirty (30) days prior to the expiration of the permit.

14. On or before March 7, 2012 and October 3, 2012, Department Staff inspected the Site and established that Respondent had conducted mining activity on additional land outside the life-of-mine for which Respondent has no permit. Respondent's unauthorized mining activity began prior to March 7, 2012. In doing so, Respondent has violated the Permit, including Mined Land Reclamation Permit Conditions 1, 2, 4 and 19, ECL Section 23-2711(1) and 6 NYCRR Section 421.1(a), ECL Section 23-2711(10) and 6 NYCRR Section 421.1(c), and ECL Section 23-2713(1) and 6 NYCRR Section 422.1(a).

15. To-date Respondent has failed to submit a renewal application for the Permit that expired on January 31, 2012. Respondent's failure to submit a renewal application prior to the permit expiration is a violation of the Permit, including General Condition 4, and ECL 23-Section 2711(11) and 6 NYCRR Section 421.1(e).

16. Pursuant to ECL Sections 71-1305(2) and 71-1307(1), any person who violates the provisions of, or fails to perform any duty imposed by Article 23, or any rule or regulation promulgated thereunder or any order or condition of any permit the Department made pursuant thereto, shall be liable for a civil penalty of \$8,000 for each violation and an additional penalty of

\$2,000 for each day during which such violation continues. In addition, ECL Section 71-1307(1) provides that any such person may be directed to cease the violation and reclaim and repair the affected site.

17. In settlement for Respondent's civil liability for the aforesaid violations, Respondent admits to the violations noted herein, affirmatively waives the right to a hearing on this matter as provided by law, consents to the issuing and entering of this Order, and agrees to be bound by the provisions, terms, and conditions contained herein.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Compliance. Respondent shall comply with the provisions, terms, and conditions set forth in this Order. Respondent's failure to comply with any provision of this Order shall constitute a default and a violation of this Order and, upon such default and violation, the Department's right to pursue all claims and remedies administratively, at law, or in equity shall not be affected by anything contained in this Order.

II. Payable Civil Penalty. Respondent is hereby assessed a civil penalty in the amount of Three Thousand Dollars (\$3,000.00) for the violations stated herein. Respondent shall properly execute this Consent Order and return it along with a cashier's check, certified check or money order made payable to the "New York State Department of Environmental Conservation" and mail both to: The New York State Department of Environmental Conservation, Region 7, Office of General Counsel, 615 Erie Boulevard West, Syracuse, New York 13204-2400, to the attention of the Barbara A. McGinn, Assistant Regional Attorney.

III. Suspended Civil Penalty. Respondent is further assessed a civil penalty in the amount of Three Thousand Dollars (\$3,000.00) payment of which is suspended as a penalty to guaranty compliance. The suspended penalty shall become payable in the event the Department determines that the Respondent has failed to comply with the terms of this Order.

The penalty to guaranty compliance under this paragraph shall become due and payable within fifteen (15) calendar days after Respondent receives written notice from the Department

that Respondent was or is in violation of this Order.

IV. Schedule for Compliance. Respondent shall comply with the terms, provisions, and conditions of the Schedule for Compliance annexed to and made a part of this Order as Schedule A.

V. Inspections. Respondent shall at all times allow any duly designated employee, consultant, contractor, or agent of the Department or of any other State agency to immediately enter the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspecting and to ensure Respondent's compliance with this Order, with any permit, registration, license, or certificate heretofore or hereafter issued for the Site, and with applicable laws and regulations.

VI. Indemnification. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims resulting from the acts or omissions of Respondent resulting from compliance or attempted compliance with the provisions of this Order.

VII. Reservation of Rights. The Department hereby reserves all its legal, administrative, and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any summary abatement powers the Commissioner may have pursuant to ECL 71-0301.

VIII. Modifications. No change in this Order shall be made or become effective except as specifically set forth by a further written order of the Department, being made upon written application to the Department by the Respondent setting forth the grounds for the relief sought, or upon the Department's own findings after an opportunity for Respondent to be heard, or pursuant to the summary abatement powers of the Department.

IX. Regulatory Fees. Nothing contained in this Order shall be construed as preventing the Department from collecting regulatory fees, where applicable.

X. Binding Effect. The provisions, terms, and conditions of this Order shall bind the Respondent, the agents, servants, employees, successors, and assigns of Respondent, and all

persons, firms, and corporations acting under or for Respondent.

XI. Effective Date. The effective date of this Order shall be the date it is signed by the Commissioner or the Commissioner's designee.

Dated: SYRACUSE, NEW YORK
_____, 2012

**NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
Joe Martens, Commissioner**

BY _____
KENNETH P. LYNCH
Regional Director, Region 7

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

**Town of Windsor
Respondent**

PRINT NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)

COUNTY OF _____) : ss.:

On the ___ day of _____ in the year 2012 before me, the undersigned, a Notary Public in aforesaid State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the corporation upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

R7-20121115-92

SCHEDULE A
SCHEDULE FOR COMPLIANCE

1. Within thirty (30) calendar days from the Effective Date of this Order, Respondent shall notify the Department in writing whether Respondent intends to seek a renewal and/or modification of its Permit to mine at the Site.
2. If Respondent intends to seek a mining permit for the Site, Respondent shall diligently pursue a permit as follows:
 - a. Within sixty (60) calendar days of the Effective Date of this Order, Respondent shall submit to the Department a complete permit renewal and/or modification application as required by the Department's statutes and regulations.
 - b. As part of the permit renewal and/or modification renewal application, newly updated maps (mining and reclamation) shall be provided. Such maps shall include depictions of the area affected by mining and the expired Permit area boundaries.
3. If Respondent does not intend to renew and/or modify the mining permit for the Site, Respondent shall reclaim the Site as follows:
 - a. Within six (6) months of the Effective Date of this Order, Respondent shall complete all reclamation activity at the Site and notify the Department of the completion of reclamation activity by submitting a sworn statement, certifying that reclamation activities have been completed. The Respondent shall request a Department reclamation inspection and approval by contacting the Department's Region 7 Regional Mined Land Reclamation Program Manager, 615 Erie Boulevard West, Syracuse, New York 13204-2400.
 - b. Within sixty (60) calendar days of the Effective Date of this Order, Respondent shall submit a Remediation and Reclamation Plan for the affected areas that are outside the 16 acre life-of-mine area for which there is no approved Remediation and Reclamation Plan.
 - c. Reclamation shall be conducted in accordance with the approved Remediation and Reclamation Plans. At a minimum, reclamation shall be conducted in accordance with the following conditions;
 - 1) Respondent shall use all existing on-Site stockpiles of topsoils for reclamation of the Site.
 - 2) The Site shall be graded to a maximum slope of 1:2 and blended smoothly with surrounding terrain, unless otherwise provided for.
 - 3) Tree stumps, brush, rock, rubble and other debris shall be buried on-Site and covered to a minimum compacted depth of two (2) feet or otherwise disposed of in a manner acceptable to the Department.
 - 4) The Site shall be successfully revegetated using a suitable seed mixture.