

# Residents for a More Beautiful Port Washington

(Colonial Sand and Stone)

DEC 23-02

## Statutes and Regulations

*ECL Section 23-2705(1);  
6 NYCRR Section 420.1(a)*

## Issue

Whether the waterfront site at which Colonial Sand and Stone (Colonial) loads minerals onto barges for shipment constitutes 'affected lands' within the meaning of ECL Section 23-2705:

## Summary of Facts

Colonial Sand and Stones' 400-acre site on the North Shore of Long Island includes the waterfront involved in this declaratory ruling. Colonial has been mining on the site for 40 years and is currently one of the largest suppliers of sand and gravel in New York State. Its mining permit with DEC expired on September 6, 1980.

The Petitioners in the present declaratory ruling are concerned citizens interested in the permitting procedure and enforcement of unfulfilled conditions in the previous permit agreement. They became involved because they perceived ongoing environmental problems with Colonial's operation including noise, dust, salty groundwater, erosion and unstabilized slopes. In this declaratory ruling the petitioners sought a determination on the status of the waterfront east of the mining site. Because the waterfront contained abandoned equipment and other debris, the petitioners asserted that the waterfront should be considered land 'affected' by the mining operations. In April 1981 the administrative law judge involved in the permit hearing determined that the waterfront was not affected land; the petition requested a reconsideration of the decision. The reconsideration upheld the initial determination which led petitioners to seek a declaratory ruling.

The company uses a site east of Shore Road in support of its mining on the site west of Shore Road. The eastern site is used to ship minerals and store equipment.

## Summary of Ruling

The waterfront site is 'affected land' because the definition includes all land influenced by the mining operation not only that from which the mineral is extracted. In this case the minerals are conveyed to the waterfront and mining equipment is stored there. Both the conveyance and the storage occurred after the effective date of the Mined Land Reclamation Law.

## Judicial Disposition

No party has challenged the declaratory ruling.

## Text of Ruling

**STATE OF NEW YORK : DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION**

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In the Matter of

a Request for a Declaratory Ruling by  
**RESIDENTS FOR A MORE BEAUTIFUL  
PORT WASHINGTON**

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Petitioners Residents for a More Beautiful Port Washington are a party in the hearing being held by this Department with respect to the mining permit application of Colonial Sand and Stone, MLR No. 3013-30-006, (Colonial). In connection with that permit hearing, petitioner seeks a Declaratory Ruling involving the definition of 'affected land', ECL Section 23-2705.1, 6 NYCRR Section 420.1(a), which would apply the term to certain lands used by Colonial.

The land in question is a waterfront area which lies to the east of Shore Road. An under-road conveyor system directly links this area with Colonial's processing plant, which is west of Shore Road. Minerals are transported on the conveyor system from the

plant to the waterfront site, where they are loaded onto barges for shipment.

The Environmental Conservation Law defines 'affected land' as

'the area of land from which overburden is to be or has been removed or upon which a spoil bank is to be or has been deposited; or lands disturbed by the construction or improvement of haulageways to or from mine, or lands disturbed by storage areas, repair areas, shipping areas, and areas in which equipment, machinery, tools or other personal property is situated. ECL Section 23-2705.1.

The definition, with slight modifications not relevant to the question at hand, also appears in the mined land reclamation regulations. 6 NYCRR Section 420.1(a).

Petitioner alleges that the land in question meets the definition of affected land by virtue of the following factors:

1. the area is used as a shipping area for minerals mined on the land area west of Shore Road;
2. the area is a storage area for equipment and other personal property associated with the mining operation;
3. a spoil bank is located on the area in question; and
4. a haulageway exists on the area in question

In analyzing the express terms and intent of the statute, the Department has determined that the site in question is affected land. The mined land reclamation law is intended to insure the reclamation of all lands physically disturbed by mining and related activities. Consequently, the jurisdiction of the law and the reclamation obligations imposed by it reach all such disturbed lands, not simply the land from which the mineral is extracted.

In the instant matter, the petitioners first assertion presents an adequate basis for including the disputed site within the affected land for the mine in question. Materials are conveyed from the processing plant, which is itself included in the affected land, directly to the waterfront site, from which they are then loaded onto barges for shipment. Furthermore, the applicant stores equipment on this site which is used in the mining operation, a second basis for including the site in the affected land under this permit. Since both of these activities have occurred since April 1, 1975 (the effective date of the mined land reclamation law), and in connection with a mining operation subject to the mined land reclamation law, this land is affected land.

Petitioner has raised two other contentions in support of the determinations which it seeks. Insufficient information has been presented in the petition for this ruling to determine whether the spoil banks or haulageways alleged to exist on the disputed site meet the criteria of the statutory definition for those terms as used in the mined land reclamation law. This fact, however, does not undermine the basis for the determination.

**CONCLUSION**

The use of the site east of Shore Road by Colonial Sand and Stone in support of its mining on the site west of Shore Road to ship minerals and to store equipment makes such land 'affected land' as the term is defined in the mined land reclamation law, and further makes such land subject to all statutory and permit requirements to which affected land is subject.

DATED: Albany, New York  
January 21, 1982

/s/ RICHARD A. PERSICO  
Deputy Commissioner/General Counsel