

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Petition of

GERENTINE & CUTRONE SAND AND GRAVEL, INC.

for a Declaratory Ruling

DECLARATORY RULING

DEC 23-06

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Gerentine & Cutrone Sand and Gravel, Inc. (Petitioner), through its counsel, Rusek, Wadlin, Heppner & Martruscello, seeks a Declaratory Ruling, pursuant to §204 of the State Administrative Procedure Act and 6 NYCRR Part 619, as to the applicability of the New York State Mined Land Reclamation Law ("MLRL"), Environmental Conservation Law ("ECL") Article 23, Title 27, to certain activities it intends to undertake.

The facts as represented in the Petition are assumed for purposes of this Declaratory Ruling and are as follows. The Petitioner operates on leased premises a processing (or wash) plant for water separation of sand and gravel, located in the Town of Newburgh, Orange County. The wash plant itself, the underground pipes which carry process discharge, and the settling ponds to which the pipes run, were all constructed in 1961. The ponds were specifically created to allow evaporation of the water from the discharged materials, leaving behind a type of soil

which Petitioner characterizes as "sandy loam."¹ The ponds now contain an accumulation of these tailings, resulting from the processing of minerals excavated from Petitioner's nearby mine between 1980 and 1983 and, more recently, from other mines not owned or operated by Petitioner. The tailings have a commercial value which can be realized after they are removed from the pond.

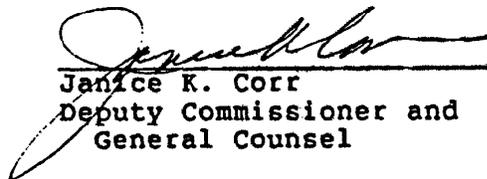
Under the above circumstances, Petitioner submits that it is not required to obtain a mining permit before removing the tailings from the settling ponds. For the following reasons, I conclude that removal of the tailings from the settling ponds is not within the jurisdiction of the MLRL.

The relevant requirement under the MLRL is set forth in ECL §23-2711.1, which requires, after April 1, 1975, "any operator who mines more than one thousand tons of minerals from the earth within twelve successive calendar months" to obtain a permit before engaging in such mining. The term "mineral" is defined as a "solid material or substance of commercial value found in natural deposits in or on the earth." ECL §23-2705.7 (emphasis added). Clearly, the accumulations of tailings resulting from

1 "Sandy loam" is "[a] soil containing 43 - 85% sand, 0 - 50% silt, and 0 - 20% clay ... and having the percentage of silt plus twice the percentage of clay exceeding 30, or a soil containing 43 - 52% sand, less than 50% silt and less than 7% clay." Glossary of Geology, American Geological Institute 629 (1972). Petitioner has submitted no analysis to support the assertion that the tailings in question are sandy loam.

Petitioner's processing operations are not natural deposits. The common meaning ascribed to the term "natural" is "present in or produced by nature; not artificial or man-made." The American Heritage Dictionary of the English Language, 875 (1969). The deposits in question were clearly produced as the result of the Petitioner's washing operations, mining of the natural deposits at the settling pond sites having occurred at the time of the pre-1975 extractions.²

DATED: Albany, New York
December 18, 1986



Janice K. Corr
Deputy Commissioner and
General Counsel

² Under different circumstances, sandy loam has been found to come within the statutory definition of mineral. In the Matter of Winer, Newburger and Sive, P.C., DEC 23-04, (March 23, 1984).