

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Application of
Elam Sand and Gravel, Corp.,
Pursuant to Article 23 of the
Environmental Conservation Law

RULING ON ISSUES
AND PARTY STATUS
AND ORDER OF
DISPOSITION

DEC Application No. 8-3250-00031-00001

Summary

This ruling addresses the issues conference held on September 20, 2011 before the Department of Environmental Conservation's (DEC, Department) Office of Hearings and Mediation Services (OHMS) with regards to the application of Elam Sand and Gravel, Corp. (Elam) for a permit to develop and operate a new 45 acre surface sand and gravel mine in the Town of West Bloomfield, Ontario County, New York. The mine is proposed to operate as a traditional mine with surface extraction of sand and gravel. The Life-of-Mine (LOM) area reviewed for this proposal is 45 acres.

Pursuant to a Notice of Legislative Hearing and Issues Conference published on August 17, 2011, a legislative hearing was held on September 19, 2011 and an Issues Conference was held on September 20, 2011 at the American Legion Post, 2475 Route 65, West Bloomfield, New York. Pursuant to the Notice, petitions for party status to participate at the issues conference were to be filed by September 9, 2011 with the Department's OHMS. No petitions for party status were received.

Background

Elam has applied for a Mined Land Reclamation (MLR) permit pursuant to Environmental Conservation Law (ECL) Article 23, Title 27, to operate a new 45 acre surface sand and gravel mine on the north side of Strong Road in the Town of West Bloomfield. Mining is not proposed for below the local water table. Excavation will be by mechanical equipment, standard for sand and gravel mining operations, including processing. Maximum processing rates for the screening and crushing operations will not exceed 200 tons per hour and 150 tons per hour, respectively. The consumptive use of ground or surface water resources has not been proposed for this mining operation. No vehicle maintenance or service activities will be conducted at this site. Final reclamation will include the replacement of stockpiled topsoil and will create stabilized, revegetated open space. The mine floor elevation is proposed to be

840 feet above mean sea level (AMSL).

SEQRA

The Department, as lead agency, determined that the proposed Elam Sand and Gravel Strong Road Mine will not have a significant adverse environmental impact and issued an amended negative declaration on July 14, 2011. The original negative declaration, issued on January 19, 2011, was amended based on additional information received by DEC after the original negative declaration was issued. The additional information pertains to ground and surface water, traffic, historical structures, and modifications to the mining plan map and reclamation map as a result of property easements. Based on staff's review of the additional information, DEC reaffirmed the original SEQRA determination, namely that the proposed mine will not result in significant, adverse environmental impacts.

Proceedings

Legislative Hearing

Department Staff requested that a public hearing be held and the matter was sent to the OHMS and was assigned to Administrative Law Judge (ALJ) Molly T. McBride. By Notice dated August 15, 2011, Department Staff noticed the legislative hearing and issues conference. This Notice was published in the Department's internet publication, *Environmental Notice Bulletin* (ENB), as well as the *Daily Messenger* on August 17, 2011. Copies of the Notice were also sent to the persons identified as interested parties, and to the local municipalities in the project area.

Pursuant to the Notice, a legislative public hearing was held on September 19, 2011. ALJ McBride presided over the hearing for the Department. DEC Staff appeared by the following Staff from the Department's Region 8 office: David Bimber, Deputy Regional Permit Administrator, and Leo Bracci, Esq., Assistant Regional Attorney. Several other members of Department staff were in attendance. The Applicant was represented by Law Offices of Peter Skivington, Gregory McCafferty, Esq., and Joseph Spezio, owner.

There were approximately 80 people in attendance at the hearing with 23 speakers. The legislative hearing began with a brief presentation of the project by Joseph Spezio, owner of Elam. Mr. Spezio outlined the permit application and the proposed mine operation. After Mr. Spezio's presentation, David Bimber spoke. Mr. Bimber advised those in attendance that the purpose of the hearing was to receive information and comments on the permit application and the draft permit issued by the Department.

Issues Conference

The issues conference was convened at 9:00 a.m. on September 20, 2011 at the American

Legion Post in West Bloomfield, NY. Part 624 of 6 NYCRR allows for participation at the issues conference by Department Staff and the Applicant (Elam) as parties to the proceeding. 6 NYCRR 624.5(a). Also, those seeking party or amicus status pursuant to 6 NYCRR 624.4 may participate. The Notice of Public Hearing directed that those seeking party or amicus status file a written request to the ALJ by September 9, 2011. No petition for party status was filed and no requests were made at the Issues Conference to participate.

DEC Staff appeared at the issues conference by Leo Bracci, Esq. and David Bimber as well several members of staff from the Department's Region 8 office. Elam appeared by Greg McCafferty, Esq., Joseph Spezio and a consultant.

There were no issues presented for adjudication at the issues conference. Department staff and applicant met at the issues conference to discuss the permit terms. After meeting, the parties put on the record a summary of agreed upon permit conditions and terms.

The issues conference was concluded on September 20, 2011 and the record for the issues conference closed at that time.

The Department issued a draft MLR permit on October 11, 2011 to allow applicant to mine unconsolidated material from a 16.94 acre permit term area within a 44.97 acre Life of Mine.

Ruling

No petitions for party status were received by the ALJ. Department staff and applicant are in agreement as to the terms of the MLR permit to be issued to applicant. All issues between and the applicant and Department staff have been resolved and no issues are found to be adjudicable.

I hereby remand the application to Staff for further processing.

_____/s/_____
Molly T. McBride
Administrative Law Judge

Dated: October 21, 2011
Albany, New York