

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (ECL) Article 17 and Article 19 and
Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York (6 NYCRR)

ORDER ON CONSENT

- by -

File Nos.
R4-2008-0530-77;
R4-2008-0610-84;
R4-2008-0616-89

Carver Sand and Gravel LLC

Respondent

WHEREAS:

1. Pursuant to ECL Article 19 and the rules and regulations promulgated pursuant to Article 19, the Department of Environmental Conservation ("Department") has jurisdiction over matters concerning air resources and pollution.
2. The Department is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.
3. Respondent, Carver Sand and Gravel LLC, owns the Masick Pit, located at 4860 State Route 30, Middleburgh, New York ("Masick facility").
4. Respondent leases the Grippy Quarry, located at Co. Rte 2, East Berne, New York ("Grippy facility").
5. Respondent owns and/or operates a Petroleum Bulk Storage ("PBS") facility (#4-600720) known as Carver Sand and Gravel, LLC, located at 4860 State Route 30, Schoharie, New York ("PBS facility").
6. Respondent owns the Pangman Road Pit, located off of NYS Route 990V, Conesville, New York ("Pangman Facility")

Masick Facility Violations

7. The Masick facility has an Air State Facility Permit (Permit # 4-4338-00004/00007) from the Department, with the latest modification of the permit effective June 16, 2006.
8. On April 29, 2008, Department staff conducted an inspection at Respondent's Masick facility.
9. 6 NYCRR 201-7.2 and Condition 3-3 of the permit require the facility to maintain all required records on site and to submit an annual certification indicating the facility has operated within the limits imposed by the emission cap.
10. The inspection conducted at the Masick facility indicated that the facility did not have the required records, the monthly and twelve month rolling total PM-10 (particulate matter less than 10 microns) emissions, on site.
11. Respondent's failure to maintain the required records, the monthly and twelve month rolling total PM-10 emissions, on site is a violation of 6 NYCRR 201-7.2 and Condition 3-3 of the permit.
12. 6 NYCRR 212.6(a) and Conditions 1-4, 1-9 and 1-14 of the permit require that the facility shall conduct a daily visible emissions observation.
13. The inspection conducted at the Masick facility indicated that the facility did not have any records of the daily visible emissions observations.
14. Respondent's failure to maintain records of the daily visible emissions observations is a violation of 6 NYCRR 212.6(a) and Conditions 1-4, 1-9 and 1-14 of the permit.
15. 40 CFR 60.8(a) and Conditions 39, 50, 3-7, and 3-13 of the permit require that within sixty (60) days after achieving the maximum production rate, but not later than 180 days after initial startup of the facility, the owner or operator of the facility shall conduct performance testing (Method 9) and provide the results of such tests, in a written report, to the Administrator.
16. The inspection conducted at the Masick facility indicated that the facility did not have a list or any other information available to demonstrate that the required visible emissions observations (Method 9) as required in 40 CFR 60, Subparts A and OOO had been performed for all the sources applicable to 40 CFR 60, Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
17. Respondent's failure to demonstrate that required visible emissions observations (Method 9) had been performed for all the sources applicable to 40 CFR 60, Subpart OOO is a violation of 40 CFR 60.8(a) and Conditions 39, 50, 3-7, and 3-13 of the permit.
18. 40 CFR 60.672(e) and Condition 57 of the permit require that no owner or operator

shall cause to be discharged into the atmosphere from any building enclosing any transfer point on a conveyor belt or any other affected facility any visible emissions except emissions from a vent.

19. During the inspection at the Masick facility, it was noted that visible emissions were coming out of several areas of the buildings associated with the emission unit (lime plant).

20. Respondent's discharge of visible emissions from several areas of the buildings associated with the emission unit (lime plant) is a violation of 40 CFR 60.672(e) and Condition 57 of the permit.

21. 6 NYCRR 211.2 and Conditions 1-25 and 3-31 of the permit require that the facility shall conduct a daily visible emissions observation and maintain daily records of the observations on site.

22. The inspection of the Masick facility indicated that the facility did not have any records of the daily visible emissions observations.

23. Respondent's failure to have any records of the daily visible emissions observations is a violation of 6 NYCRR 211.2 and Conditions 1-25 and 3-31 of the permit.

24. 40 CFR 60.92 and Condition 67 of the permit require that the pressure differential across the baghouse be maintained within a range of 0.5 pounds per square inch (psi) to 10 psi.

25. The records reviewed by Department staff during the inspection of the Masick facility indicated that the pressure differential across the baghouse was being maintained at 0.45 psi, which is outside of the permitted range.

26. Respondent's failure to maintain the pressure differential across the baghouse within the range of 0.5 pounds per square inch (psi) to 10 psi is a violation of 40 CFR 60.92 and Condition 67.

Grippy Quarry Violation

27. On April 17, 2008, Department staff conducted an inspection at the Grippy Facility.

28. During the inspection, Department staff noted three portable aggregate processing units at the Grippy Facility. The units were a (1) BL Pegson 32 x 44 portable unit (Carver # 909, MSHA # 30-03514, year constructed 2002/2003) consisting of a jaw crusher and screen, (2) BL Pegson 1300 Maxtrak portable unit (Carver # 908, MSHA # 30-03513, cone crusher, year constructed 2003), and (3) a Finlay 20 x 5 Screen portable unit (Carver # 916, Model # 693, Serial # FT 530 433, year constructed 2003).

29. All three portable units at the Grippy Facility are subject to the requirements of 40 CFR 60, Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.

30. Respondent does not have an Air Permit or Registration to operate the portable aggregate processing units at the site.

31. 6 NYCRR 201-1.1(b) requires that owners and/or operators of air contamination sources obtain a permit or registration certificate from the Department for the operation of such sources.

32. Respondent's failure to obtain an Air Permit or Registration to operate the portable aggregate processing units at the site is a violation of 6 NYCRR 201-1.1(b).

PBS Facility Violations

33. On May 20, 2008, Department staff inspected the PBS facility and observed the following violations:

6 NYCRR 612.2(d)	Registration information does/did not reflect current site status
6 NYCRR 612.2(e)	Registration is/was not posted at the facility
6 NYCRR 613.3(b)	Fill Port color coding is missing or incorrect (both above and underground tanks)
6 NYCRR 613.3(c)(1)	Shear Valve on pressurized piping is not secured properly or not operational
6 NYCRR 613.3(c)(3)(ii)	AST and/or gauge is/was not properly labeled with design capacity, working capacity and ID number
6 NYCRR 613.3(c)(5)	Lines with a gravity head have non functioning or missing operating valve
6 NYCRR 613.3(c)(6)	No secondary containment for AST > 10,000 gallons
6 NYCRR 613.3(c)(6)(iii)	Dike drain valve not locked closed
6 NYCRR 613.3(d)	Inadequate maintenance of spill prevention equipment (water in sumps, inoperable alarms, sensors, etc)
6 NYCRR 613.6(a) & (c)	Monthly inspection of AST not performed and no records maintained
6 NYCRR 613.8	Observed an unreported spill on the property (product in sumps or catch basins)

Pangman Facility Violation

34. On July 22, 2008, Department staff conducted an inspection at Respondent's Pangman facility. The facility does not have an Air Permit or an Air Registration.

35. During the inspection, Department staff noted that the Pangman facility contained a Powerscreen Chieftain 2100 Portable Screen Plant (MSHA # 30-03572, Carver # 915). The portable plant includes a triple deck screen and five conveyors. Based on records at the facility, the portable plant has been on site since May 7, 2008. A Powerscreen Chieftain 2100 Portable Screen Plant has an output potential of up to 661 tons per hour (depending on mesh sizes and material). The portable plant was in operation at the time of the inspection.

36. 6 NYCRR 201-3.2 (c)(29) and (30) provides that all processing equipment at sand and gravel mines or quarries that operates above a maximum rated processing capacity of 150 tons of minerals per hour or less is a non-exempt emission source and must be registered or permitted.

37. 6 NYCRR 201-1.2 provides that the owner and/or operator must apply for a permit for such emission source or register the facility in accordance with the provisions of this Part and the emission source or facility is subject to all regulations that were applicable to it at the time of construction or modification and any subsequent requirements applicable to existing sources or facilities.

38. Respondent's operation of a Powerscreen Chieftain 2100 Portable Screen Plant without an Air Permit or an Air Registration is a violation of 6 NYCRR 201-3.2 (c)(29) and (30) and 6 NYCRR 201-1.2.

39. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 thru 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.

40. ECL Section 71-2103 provides that any person who violates any provision of Article 19 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed fifteen thousand dollars (\$15,000) for a first violation plus an additional penalty not to exceed fifteen thousand dollars (\$15,000) for each day during which such violation continues and that such person may be enjoined from continuing such violation.

41. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. In respect of the aforesaid violation, a civil penalty in the amount of FORTY THOUSAND DOLLARS (\$40,000) is hereby assessed against the Respondent. TWENTY THOUSAND DOLLARS (\$20,000) of the civil penalty is due in accordance with the following schedule:

1. \$10,000 with the return of the signed and notarized copy of this Order by September 2, 2008 and
2. \$10,000 by October 2, 2008.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, TWENTY THOUSAND DOLLARS (\$20,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Engineer
New York State Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department

shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: _____, 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within thirty (30) days of the effective date of this Order, Respondent shall submit to the Department the monthly and twelve (12) month rolling total PM-10 emission records for January 2008 through May 2008 for the Masick facility.
2. Within thirty (30) days of the effective date of this Order, Respondent shall review its records for the Masick facility to determine which sources at that facility have been tested in accordance with 40 CFR 60.8(a) and Conditions 39, 50, 3-7, and 3-13 and submit to the Department a list, including at a minimum, the sources (as identified in the facility's Air State Facility Permit) that have been tested, the date of the Method 9 testing for each source, and the results of the Method 9 testing. Respondent shall also submit a list of all the sources that have not been tested and a date for when the required testing will be performed.
3. Within sixty (60) days of the effective date of this Order, Respondent shall perform the required testing (Method 9) in accordance with 40 CFR 60.8(a) and Conditions 39, 50, 3-7, and 3-13 of all sources identified in Item #2 above that have not previously been tested.
4. Within thirty (30) days of performing the testing required in Item #3, Respondent shall submit the results, in written reports, of the tests to the Department.
5. Within sixty (60) days of the effective date of this Order, Respondent shall submit to the Department a complete Air State Facility Permit Application for the entire Masick facility. The application should include all of the information required in 6 NYCRR Part 201-5.2.
6. Within thirty (30) days of the effective date of this Order, Respondent shall submit an up to date list of all the equipment on site at the Masick facility. The list shall include at a minimum the equipment name/type, the emission source identifier as noted in the facility's Air State Facility Permit, the manufacturer's process rate, and the manufactured date.
7. Within thirty (30) days of the effective date of this Order, Respondent shall submit a revised fugitive dust control plan for the Masick facility to the Department for review and approval.
8. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a registration application pursuant to Part 201 for air emission sources at the Grippy Facility. Information provided with the registration shall include design capacity of any exempt and non-exempt air emission sources allowed to operate at the site. Calculations shall also be provided that will provide PTE and identify actual air emissions covered by the registration.
9. Within 10 days of the effective date of this order, Respondent shall properly register the PBS facility and post a valid Registration Certificate at the facility.

10. Within 30 days of the effective date of this Order, Respondent shall submit proof that the unreported spill(s) at the PBS facility has/have been properly remediated, the spill prevention equipment is in good operating condition for all tanks, and the spill prevention equipment is being properly maintained.

11. Within 30 days of the effective date of this Order, Respondent shall submit photos and documentation to certify that at the PBS facility the fill ports have been color coded, the tanks have level gauges, the tanks are properly labeled, and the facility operator is conducting monthly inspections and maintaining records of those inspections.

12. By the 5th of each month, Respondent shall submit a copy of all visual monthly inspections at the PBS facility for the previous month. This shall be required until 3 months after the effective date of this Order.

To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number, and the PBS registration identification number.

13. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a permit or registration application pursuant to Part 201 for air emission sources at the Pangman facility.