

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (ECL) Articles 19 and 23, and
Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York (6 NYCRR)

**MODIFICATION OF
ORDERS ON CONSENT**

- by -

File Nos. R4-2008-0530-77M1 &
R4-2008-0616-89M1

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 has jurisdiction pursuant to ECL Article 23 to regulate surface mining and reclamation.
3. Respondent, Carver Sand and Gravel LLC, owns the Masick Pit, located at 4860 State Route 30, Middleburgh, New York (“Masick facility”).
4. 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.
5. The Masick facility is subject to a Mined Land Reclamation Permit (Permit #4-4338-00004/00009) (“mining permit”) which was effective on March 26, 2004 and which has an expiration date of March 26, 2009. The mining permit contains an approved Life of Mine Boundary (“LOM”).
6. Respondent is subject to Orders on Consent R4-2008-0530-77 and R4-2008-0616-89 (both effective on September 2, 2008) (“Orders”). These Orders both contain the same Schedule of Compliance.

7. Item 2 of the Schedule of Compliance required Respondent, by October 2, 2008, to 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 was also required to submit a list of all the sources that have not been tested and a date for when the required testing will be performed by October 2, 2008.

8. Item 3 of the Schedule of Compliance required Respondent, by November 1, 2008, to 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 that had not previously been tested.

9. Item 4 of the Schedule of Compliance required Respondent, by December 1, 2008, to submit the results, in written reports, of the Method 9 tests to the Department.

10. Item 5 of the Schedule of Compliance required Respondent, by November 1, 2008, to submit to the Department a complete Air State Facility Permit Application for the entire Masick facility. The application should have included all of the information required in 6 NYCRR Part 201-5.2.

11. Item 7 of the Schedule of Compliance required Respondent, by November 1, 2008, to submit a revised fugitive dust control plan for the Masick facility to the Department for review and approval.

12. As of January 7, 2009, Department staff have determined that Respondent has not completed items 2, 3, 4, 5, 7, 10 and 12 of the Schedule of Compliance.

13. Respondent's failure to complete items 2, 3, 4, 5, 7, 10 and 12 of the Schedule of Compliance is a violation of Orders on Consent R4-2008-0530-77 and R4-2008-0616-89.

14. 6 NYCRR 422.1(a) provides that the permittee shall not deviate or depart from the mined land-use plan without approval by the department of an alteration or amendment thereto.

15. On December 3, 2008, Respondent submitted an application to renew and modify their mining permit for the Masick facility..

16. The Mining Plan Map Respondent submitted as part of the application to modify the mining permit and expand the LOM indicates that Respondent has mined outside the approved LOM.

17. Respondent's disturbance of areas outside the approved LOM is a violation of 6 NYCRR 422.1(a).

18. Respondent has affirmatively waived their right to a hearing in the manner provided by law and has consented to the issuing of this Modification and has agreed to be bound by the terms, provisions, and conditions contained herein.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of FORTY THOUSAND DOLLARS (\$40,000) is hereby assessed against the Respondent. TWENTY FIVE THOUSAND DOLLARS (\$25,000) of the civil penalty is due in accordance with the following schedule:

1. \$5,000 with the return of the signed and notarized copy of this Modification by February 20, 2009;
2. \$5,000 by March 31, 2009;
3. \$5,000 by April 30, 2009;
4. \$5,000 by May 31, 2009, and
5. \$5,000 by June 30, 2009

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, FIFTEEN THOUSAND DOLLARS (\$15,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Modification in a timely fashion. In the event that Respondent fails to comply with the requirements of this Modification 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 Modification by Respondent.

II. Respondent shall comply with the Schedule of Compliance set forth in this Modification, which is incorporated and made part of the terms, provisions, and conditions of this Modification and which supercedes any Schedule of Compliance set forth in the Orders.

III. The effective date of this Modification shall be the date it is signed by the Department.

IV. All terms, provisions, and conditions of the Orders remain in effect unless expressly modified in this Modification.

V. The Notice of Hearing and Complaint for this matter, which was served upon Respondent on January 23, 2009, shall be withdrawn upon the execution of this Order.

DATED: _____, 2009
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. By May 15, 2009, Respondent shall perform Method 9 testing on all sources subject to 40 CFR 60, Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants. Respondent shall submit the results, in written reports, of the tests to the Department on or before April 1, 2009.
2. By April 1, 2009, Respondent shall submit to the Department a new, 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.
3. By April 1, 2009, Respondent shall submit to the Department for review and approval a revised fugitive dust control plan for the Masick facility.
4. Respondent shall hire a qualified professional to evaluate emissions from the lime manufacturing process to determine compliance with air quality standards and to determine the type of air pollution controls necessary. By May 1, 2009, Respondent shall submit to the Department for review and approval a plan and schedule for the implementation of such air pollution controls. Such plan and schedule shall become enforceable under this Order.