

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott, Schenectady, New York 12306-2014

Phone: (518) 357-2048 § Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 3649

December 17, 2014

Frank Wright  
315 Stevers Crossing Road  
Hudson, NY 12534

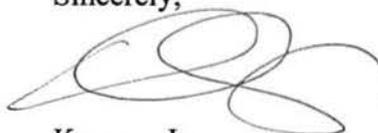
Re: Order of Consent  
R4-2014-0917-151

Dear Mr. Wright:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen s. Lavery  
Assistant Regional Attorney  
Region 4

cc: P. Evans  
M. Ellis

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of the Environmental  
Conservation Law Article 23

Order on Consent  
File No. R4-2014-0917-151

-by-

Frank Wright  
315 Stevers Crossing Road  
Hudson, NY 12534

Respondent  
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WHEREAS:

1. New York State Department of Environmental Conservation ("Department or DEC") has administrative jurisdiction pursuant to Environmental Conservation Law ("ECL") Title 27 of Article 23 to regulate surface mining and reclamation.
2. Respondent, Mr. Frank Wright, owns property located at 315 Stevers Crossing Road in the Town of Claverack, Columbia County ("site").
3. Respondent is a person, as that term is defined at ECL 23-2705(12), and 6 NYCRR 420.1 (p).

Facts

4. On September 9, 2014, Department staff inspected the site and observed that a minimum of 3,400 cubic yards have been mined within 12 successive calendar months.
5. On October 31, 2014, Department staff determined that the site was reclaimed.

Mined Land Violation

6. Regulations at 6 NYCRR 420.1(k) defines "*mining*" as "*the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. Mining shall not include the*

*excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.”*

7. Regulations at 6 NYCRR 421.1 (a) provide that: “*After September 1, 1991, any person who mines or proposes to mine from each mine site more than 1,000 tons or 750 cubic yards of minerals, whichever is less, from the earth within 12 successive calendar months or who mines or proposes to mine over one hundred cubic yards of minerals from or adjacent to any body of water not subject to the jurisdiction of article 15 of the environmental conservation law or to the public lands law shall not engage in such mining unless a permit for such mining operation has been obtained from the department. A separate permit shall be obtained for each mine site.*”

8. Respondent does not have a State permit to operate the mine.

9. ECL 71-1307 (1) provides that any person who violates any provision of ECL Article 23 of this chapter or commits any offense described in Section 71-1305 of this title shall be liable to the people of the state for a civil penalty not to exceed \$8,000 and an additional penalty not to exceed \$2,000 for each day during which such violation continues.

10. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law, has consented to the issuance and entry of this Order, and agrees 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. Penalty

In respect to the aforesaid violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent and shall be payable to the New York State Department of Environmental Conservation by money order or certified check.

II. Reports

All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Natural Resources Supervisor.

III. Indemnification

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 this Order by Respondent, his employees, servants, agents, successors or assigns.

#### IV. Successors and Assigns

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

#### V. Effective Date

The effective date of this Order shall be the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

#### XI. Default

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to Respondent by DEC.

#### XII. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

#### XIII. Other Rights

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED: 12/17 2014  
Rotterdam, New York

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives his right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Frank Wright

SIGNED: Frank Wright

TITLE: \_\_\_\_\_

DATE: 12/15/2014

STATE OF N.Y. )

COUNTY OF Columbia ) ss.:

On the 15<sup>th</sup> day of December in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Frank Wright personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Kimberly J. Simmons  
Notary Public

Qualified in the County of:

My Commission Expires: Sept. 17, 2017

**Kimberly J. Simmons**  
**Notary Public, State of New York**  
**Qualified in Columbia County**  
**# 01SI6064129**  
**Commission Expires Sept. 17, 2017**