

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 6055

March 1, 2018

William M. Larned & Sons, Inc.
544 Burdeck Street
Schenectady, NY 12306

Re: Order on Consent
R4-2018-0130-6

Dear Mr. Larned:

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

This will also acknowledge receipt of \$4,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Article 23 of the New York State
Environmental Conservation Law and
Title 6 of the Official Compilation of the
New York State Code of
Rules and Regulations

ORDER ON CONSENT

-by-

R4-2018-0130-6

William M. Larned & Sons, Inc.
544 Burdeck Street
Schenectady, NY 12306,

Respondent.

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over Mined Land Reclamation pursuant to Article 23, Title 27 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”).
2. Respondent William M. Larned & Sons, Inc. is the owner of an approximately 104-acre sand and gravel mine known as the Stitt Road Pit, located at 6662 Route 158 in Guilderland, New York (“Mine”).
3. Respondent was issued a Mined Land Reclamation renewal permit for mining activities (#4-0130-00041/00001) (the “Permit”) for the Mine, effective May 6, 2016 and expiring on May 5, 2021.
4. Respondent is a person as defined by ECL §§ 23-0101(12).

Background

5. On April 18, 2017, Department staff inspected the Mine site and observed large quantities of sand, clay, and shale imported from outside the Mine.
6. The imported materials observed at the Mine by Department staff during the April 18, 2017 inspection are not included in the approved Mined Land Use Plan as materials permitted to be imported.
7. An email dated May 2, 2017, from Paul Buzash, consultant for Respondent, to Department staff, indicated that the material was imported from unidentified sites with the intention to use said material in reclamation.

8. On June 20, 2017, the Department issued a Notice of Violation to Respondent which required Respondent either to remove the imported material from the Mine by November 1, 2017, or to submit a Permit modification application proposing disposal of recognizable, uncontaminated soil in the Mine in accordance with the Memorandum of Understanding between the Department's minerals and solid waste programs regarding the disposal of solid waste.

9. On August 31, 2017, Department staff received an email from Bill Smart, explaining that he had succeeded Paul Buzash as consultant to Respondent, and requesting an extension to remove the imported material from November 1, 2017, to December 31, 2017.

10. By reply email dated August 31, 2017, Department staff granted the requested extension to remove the imported material.

11. On January 12, 2018, Department staff received an email from Respondent's consultant stating that Respondent did not intend to submit a Permit modification application, and that to the best of the consultant's knowledge, the imported material had not been removed from the Mine site.

VIOLATIONS

Mined Land Use Violation

12. ECL § 23-2713(1) requires that "[a]ll mining and reclamation activities on the affected land shall be conducted in accordance with an approved mined land-use plan."

13. Regulation 6 NYCRR § 422.1(a) likewise requires that "[a]fter the department has issued a mining permit, the permittee shall not deviate or depart from the mined land-use plan without approval by the department of an alteration or amendment thereto."

14. ECL § 71-1305(2) states that it shall be unlawful for any person to violate "any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto."

15. Permit Condition No. 18 states, "There shall be no importation of any material(s) of any kind, including exempt materials, or minerals originating from outside the limits of the Life of Mine, except as outlined in the Mined Land Use Plan. This mine is permitted to import only the following:

- a. Broken glass for storage/transfer/grading;
- b. Shredded bark for storage/transfer/reclamation;
- c. Silt dredged from the reservoir as an adjunct to topsoil available for reclamation;
- d. Alum sludge/leaf compost generated by the City of Watervliet's composting (sic) program for reclamation purposes. This compost must be tested by the City prior to placement to ensure that there are not contaminants in it. Human waste is composted material is not permitted." (*Emphasis removed from original*).

16. Respondent's importation of sand, clay, and shale from outside the Mine is an ongoing violation of ECL § 23-2713(1), 6 NYCRR § 422.1(a), and Permit Condition No.18.

Permit Fee Violation

17. ECL § 72-1003(6) requires permittees to submit an annual fee to the Department in the amount of “eight thousand dollars for affected land of an acreage greater than thirty acres.”
18. Regulation 6 NYCRR § 421.2(b) likewise requires permittees to submit annual permit fees to the Department.
19. Respondent has failed to pay its annual fee for Billing Year 2017.
20. Respondent’s failure to pay its annual fee constitutes a violation of ECL § 72-1003(6) and Regulation 6 NYCRR § 421.2(b).

Waiver of Hearing

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

Civil Penalty

22. ECL § 71-1307(1) states, “Any person who violates any provision of 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 eight thousand dollars (\$8,000) and an additional penalty of two thousand dollars (\$2,000) for each day during which such violation continues”

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

I. **Civil Penalty.** Respondent is assessed a civil penalty in the amount FOUR THOUSAND DOLLARS (\$4,000). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by company or bank check, or money order, payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent’s obligation to complete performance of the terms of this Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner’s name, facility name and address, contact name, and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting under or controlled by it.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **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 the provisions hereof by Respondent, its directors, officers, employees, agents, successors or assigns.

VII. **Modification.** 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, such change to be made only upon written agreement of the parties.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary for the Department to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

X. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

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

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors,

officers, employees, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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. Review of Submitted Documentation. 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order 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 submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. Communications. Communications shall be sent to:

For Department:

New York State Department of Environmental Conservation
Region 4
Attn: Psalm Wyckoff
1130 North Westcott Road
Schenectady, NY 12306

All submittals relating to the Mined Land Reclamation violation shall have the following information: owner's name, facility name and address, and the MLF identification number.

For Respondent:

William M. Larned & Sons, Inc.
Attn: Timothy Larned
544 Burdeck Street
Schenectady, NY 12306

DATED: Rotterdam, New York
March 1, 2018

Basil Seggos
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 its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

William M. Larned & Sons, Inc.
Authorized Representative

SIGNED: [Signature]

TITLE: Pres

DATE: 2/26/18

STATE OF NEW YORK }
COUNTY OF Schenectady } ss.:

On the 26 day of February in the year 2018, before me, the undersigned, personally appeared Timothy S. Larned, personally known
(Full name)

to me who, being duly sworn, did depose and say that he/she/they reside at:
544 Burdett Street, Schenectady, NY 12306
(Full mailing address)

and that he/she/they is (are) the President
(Corporate officer or attorney in fact duly appointed)
of William M. Larned & Sons, Inc.
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

[Signature]
Notary Public

Qualified in the County of:
My Commission Expires:

COLLEEN M. GANEY
Notary Public, State of New York
No. 01GA6254777
Qualified in Schenectady County
Commission Expires 01/23/2020

SCHEDULE OF COMPLIANCE

1. **Within ninety (90) days of the effective date of this Order, or May 31, 2018**, whichever is later, Respondent shall remove all non-permitted imported material from the Life of Mine, including but not limited to: all sand, clay, shale, asphalt, and concrete.
2. **By March 21, 2018**, Respondent shall pay its regulatory fee, including all applicable penalties and accrued interest, in the amount of \$10,177.54.

Payment shall be made payable to "NYS Department of Environmental Conservation" and sent, along with the enclosed invoice, to:

NYS Department of Environmental Conservation
Church Street Station
P.O. Box 3782
New York, NY 10008-3782

3. Compliance with this Schedule shall not be a defense to subsequent violations.