

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 7830

November 22, 2016

John Boice
27 Burton Street
Walton, NY 13856

Re: Order on Consent
R4-2016-0429-90

Dear Mr. Boice:

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

This will also acknowledge receipt of \$500 1st of 5 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$500 is due on or before November 30, 2016.

Sincerely,



Dusty Renee Tinsley
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
6 NYCRR Part 422

ORDER ON CONSENT

-by-

R4-2016-0429-90

John Boice
27 Burton Street
Walton, New York 13856,

Respondent.

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation ("Department") is an agency of the State charged with jurisdiction over Mined Land Reclamation in the State pursuant to Article 23 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereunder.
2. Respondent, John Boice, is the operator of a quarry located at County Route 16, Parcel 192-1-86, Delhi, New York 13753 (Delaware County). ("Facility"). There are two quarries at the Facility, a larger northern quarry ("North Quarry") and a smaller southern quarry ("South Quarry").

INSPECTIONS

3. The Facility was completed on March 29, 2016.
4. Department staff sent a Notice of Violation dated April 4, 2016, to the Respondent.

FIRST VIOLATION

5. ECL §23-2711(1) states that "After September first, nineteen hundred ninety-one, any person who mines or proposes to mine from each mine site more than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve 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 fifteen of this chapter 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."
6. ECL §23-2711(12)(a) states that "Notwithstanding any provision of this section to the contrary, any person who engages in or proposes to engage in bluestone mining exploration shall not commence such exploration unless a written authorization for such exploration has been obtained from the Department."

7. 6 NYCRR Part 421.1(a) states “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 100 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.”
8. Department staff determined during the March 29, 2016 inspection that Respondent mined in excess of 750 cubic yards of minerals from the North Quarry within 12 successive calendar months without a written authorization or a permit.
9. Respondent’s removal of more than 750 cubic yards of minerals from the North Quarry within 12 successive calendar months without a written authorization or a permit are violations of ECL §§23-2711(1) and (12)(a) as well as 6 NYCRR Part 421.1(a).

WAIVER

10. Respondent has affirmatively waived his 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

11. ECL Section 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 and an additional penalty of two thousand dollars for each day during which such violation continues”

REMEDIES

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

I. **Civil Penalty.** With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of EIGHT THOUSAND DOLLARS (\$8,000) of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check in five monthly installments of \$500.00. The installments are due as follows: First Installment due by October 31, 2016 at the time this Order is signed, notarized and returned to the Department; Second Installment is due by November 30, 2016; Third Installment is due by December 31, 2016; Fourth Installment is due by January 31, 2017; and the Fifth Installment is due by February 28, 2017. The failure to make a timely payment shall cause the balance of the total penalty of \$8,000, which includes both the payable and suspended portions of the civil penalty, to become immediately due and payable. FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500) of the civil penalty is suspended conditioned on Respondent’s compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from

the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact 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 subordinate thereto.

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 the Department, the State of New York, and their representatives and employees harmless 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.

VII. **Modification.** The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

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 in order for DEC 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.

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, its officers, directors, agents, servants, employees, successors and assigns;

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

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, 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 the submittals Respondent makes pursuant to this Order 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 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 so 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 of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission 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 submission 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. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Communications.** Communications shall be sent to

For Department:

Natural Resource Supervisor
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

John Boice
27 Burton Street
Walton, New York 13856

Please include entity name, address, and permit number (if applicable) on all correspondence.

XIV. This Order settles all violations set forth in the July 12, 2016 Complaint upon payment of the civil penalty and compliance with the Schedule of Compliance. The Notice of Hearing and Complaint in this matter shall be withdrawn as of the effective date of this Order.

DATED: Rotterdam, New York
Nov 22, 2016

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Name (Print): John Boice

Signature: [Handwritten Signature]

Date: 11/14/16

STATE OF NEW YORK)
) ss.:
COUNTY OF Delaware)

On the 14th day of November in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared John Boice, 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 the which the individual acted, executed the instrument.

[Handwritten Signature]
Notary Public
Qualified in the County of: Delaware
My commission expires: 10/20/17

DEBRA L. RENWICK
Notary Public, State of New York
Registration #01RE5086720
Qualified in Delaware County
Commission Expires October 20, 2017

SCHEDULE OF COMPLIANCE

1. By November 1, 2016, Respondent shall remove all equipment and waste from the Facility.
2. Regarding the North Quarry, by May 15, 2017, Respondent shall:
 - a. push all spoil rock up against the highwall,
 - b. compact the spoil rock pushed up against the highwall to remove voids,
 - c. grade the spoil rock pushed up against the highwall with slopes no greater than 1V:2H, and
 - d. contact the Mined Land Reclamation Specialist ("MLRS") when grading is complete to schedule an inspection. The grading must be approved by MLRS before Respondent places soil on the spoil rock pile.
3. Regarding the North Quarry and the spoil banks of the North Quarry and South Quarry, by June 1, 2017, Respondent shall:
 - a. spread three inches of fertile soil over all affected areas of the North Quarry, except the logging road, and the spoil bank of the South Quarry,
 - b. shall cast over the spoil pile that has been deposited on the natural hill slope below the Facility. The entire hill slope must be covered with no areas of spoil exposed, and
 - c. contact the MLRS when grading of the topsoil is complete to schedule an inspection. The topsoil grading must be approved by the MLRS before the Respondent places seed, lime, fertilizer, and mulch on the topsoil.
4. Within 48 hours of the application of fertile soil, Respondent shall apply the following:
 - a. seed with a conservation seeding mixture that contains at least two legumes (ex. red clover, trefoil, etc.) at the rate of 80 pounds per acre,
 - b. perform pH testing and apply lime as necessary,
 - c. fertilize with a slow release nitrogen fertilizer at the rate of 300 pounds per acre, and
 - d. hay mulch at the rate of 2,000 pounds per acre without bare spots.
5. The vegetation must reach the regulatory requirement of 75% vegetative cover in the summer of 2018. If the vegetation does not meet the required cover by September 1, 2018, Respondent will undertake additional application(s) of fertile

soil and seed, fertilizer, and mulch before October 1, 2017 as directed by the MLRS.