

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
7017 1070 0001 0125 7797

June 21, 2019

B. Scott Clark
P.O. Box 427
Delhi, NY 13753

Re: Order on Consent
R4-2019-0402-20
Burton F. Clark, Inc.

Dear Mr. Clark :

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

This will also acknowledge receipt of \$1,650 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff
J. Perry



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of the Environmental
Conservation Law (“ECL”) Article 23,
and Part 422 of Title 6 of the Official
Compilation of Codes, Rules and Regulations
of the State of New York (“6 NYCRR”),

ORDER ON CONSENT
File No. R4-2019-0402-20

- by -

Burton F. Clark, Inc.
P.O. Box 427
Delhi, NY 13753

Respondent

WHEREAS:

Jurisdiction

1. The Department has jurisdiction pursuant to ECL Article 23 to regulate surface mining and reclamation.

Permits and Conditions

2. Respondent’s possesses a Mined Land Reclamation Permit, #4-3646-00182/00001 (“permit”) for a 13- acre unconsolidated sand and gravel mine, known as the Henderson Gravel Mine, located on Southside Drive, Oneonta, New York (“Otsego County”) (“mine”) (“site”), which expires on May 31, 2022.

3. Special Condition #1 of *Respondent’s Mined Land Reclamation Permit Conditions* requires conformance with plans, specifically that “*all activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant’s agent as part of the permit application.*”

4. Special Condition #4 of *Respondent’s Mined Land Reclamation Permit Conditions* requires that “*there shall be no importation, storage, disposal or processing of materials, of any kind, originating from outside the limits of the life of mine, without first applying for and obtaining a modification permit.*”

Laws and Regulations

5. ECL 71-1305(2) provides that it shall be unlawful for any person to “*Violate any of the provisions of or fail to perform 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.*”

6. Regulations at 6 NYCRR 422.1(a) provide that “*Every applicant for a mining permit shall submit to the department a mined land-use plan which shall set forth in detail an outline of the mining property and the affected land, the applicant's mining plan and the applicant's reclamation plan. After 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.*”

Facts

7. On October 21, 2015, Department staff observed that Respondent had mined sand and gravel down to bedrock in the center of the mine. At that time, Respondent was informed that they would need to replace three feet of sand and gravel on all exposed bedrock at the time of reclamation to facilitate groundwater movement, pursuant to Special Condition No. 24 of the permit. Department staff recommended that Respondent dig test pits in the floor of the mine, so the requisite three feet could be left in place rather than replaced. Department staff recommended that Respondent dig test pits in the floor of the mine, so the requisite three feet could be left in place rather than replaced.

8. Department staff again inspected the site on April 13, 2016, April 3, 2017, and observed that greater areas of Bedrock were observed to be exposed in the floor of the mine.

9. Department staff inspected the site April 20, 2018 and observed that a large pile of ripped bedrock was observed in the south side of the mine.

10. On March 14, 2019, Department staff once again inspected the site and determined that the large pile of ripped bedrock had been significantly reduced and that there were multiple piles of salable, processed consolidated stone throughout the mine.

Violations

11. Respondent's ripping the exposed bedrock, stockpiling and processing what is estimated to be at least 5,300 cubic yards of consolidated stone which is stockpiled on the site when only unconsolidated sand and gravel is authorized to be mined at this location, is a deviation and departure from the approved mine land use plan and a violation of Special Condition #1 of *Respondent's Mined Land Reclamation Permit*, regulations at 6 NYCRR 422.1(a), and ECL 71-1305(2).

12. Respondent's importation of brick, stone, and dirt was observed surrounding the eastern retention pond which is a deviation and departure from the approved mine land use plan and a violation of Special Condition #4 of *Respondent's Mined Land Reclamation Permit*, regulations at 6 NYCRR 422.1(a), and ECL 71-1305(2).

Civil Penalties

13. ECL Section 71-1307(1) provides that any person who violates any provision of Article 23 of the ECL or commits any offense described in Section 71-1305 of this title shall be liable to the people of this 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 HEREBY ORDERED THAT:

Waiver of Hearing

14. Respondent has affirmatively waived its right to a hearing in the manner provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the terms, provisions, and conditions contained herein.

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

I. Civil Penalty

In respect of the aforesaid violations, a civil penalty in the amount of ONE THOUSAND SIX HUNDRED FIFTY DOLLARS (\$1,650) shall be paid by money order, or check made payable to the order of "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check. The check shall be sent to:

**The Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway
10th Floor
Albany, NY 12233-4900**

In the alternative, payment of the civil penalty can be made by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line>

The signed and notarized Order on Consent shall be sent to:

**New York State Department of Environmental Conservation
Region 4 Main Office
1130 North Westcott Road
Schenectady, NY 12306-2014
ATTN: Karen S. Lavery, Esq.**

II. Communications

All communications required herein shall be made to: Department - DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention - Psalm Wyckoff, Mined Land Reclamation Specialist II, (518) 357-2254, psalm.wyckoff@dec.ny.gov. All communications shall include a reference to the Order on Consent Case Number R4-2019-0402-20.

III. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent.

IV. Summary Abatement

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.

V. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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.

VI. Review of Submittals

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 accepts 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.

VII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VIII. Modifications and Extensions

No modifications or extensions of this Order shall be made or become effective except as may be specifically set forth in writing by the Department.

IX. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

X. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XI. Reservation of Rights

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.

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

C. 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;

XII. 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.

XIII. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations.

XIV. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

XV. The Order on Consent will terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

DATED: June 20 2019
Rotterdam, NY

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.

Burton F. Clark, Inc.

Authorized Representative: James D. Catella

SIGNED: 

TITLE: Treasurer

DATE: 6/17/19

STATE OF New York)

)
)ss.:

COUNTY OF Delaware)

On the 17th day of June 2019 in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared James Catella 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.

Chandler Shepard
Notary Public

Qualified in the County of: Delaware
My Commission Expires: 12/7/2019

Chandler Shepard
Notary Public - State of New York
No. 01SH6334123
Qualified in Delaware County
Commission Expires December 7, 2019

SCHEDULE OF COMPLIANCE

1. Respondent must **cease all mining of consolidated stone immediately.** **Within 2 weeks of the effective date of this Order**, Respondent shall indicate to the Department, in writing, which of the two actions described below will be taken:

a. **Within 30 days of the effective date of this Order:** Respondent must redistribute all of the stockpiles of shale in an even layer over the area where the consolidated rock was ripped from the mine floor and place three feet of permeable sand and gravel on top of the exposed bedrock in accordance with the approved reclamation plan;

OR

b. **Within 90 days of the effective date of this Order**, Respondent shall submit to the Department, a modification plan to add mining of consolidated stone to the permit. The modification must include:

i. A narrative including that consolidated stone will be mined at the location, all proposed mining methods, excavation area details, and future consolidated stone excavation plans. Include a description of how the activity will affect any drainage patterns and stormwater controls at the site.

ii. An updated mining plan map. The map should detail the full extent of all current and future bedrock mining.

iii. An updated reclamation map showing all changes to the reclamation grades and the currently approved mine floor and cross sections must also be submitted.

iv. An updated noise study for the mine, which accounts for the addition of bedrock ripping.

2. Respondent must **cease the importation of offsite material immediately.** **Within two weeks of the effective date of this Order**, Respondent shall indicate to the Department in writing which of the actions described below will be taken:

a. **Within 30 days of the effective date of this Order**, if Respondent wishes for the imported brick, stone, and dirt to remain in the site, they shall submit a proposal detailing the importation activity that fulfills the Region 4 Importation Guidance (enclosed);

OR

b. **Within 30 days of the effective date of this Order**, Respondent shall remove all imported material from the Life of Mine. Respondent must submit to the Department, photographic evidence of the removal.

3. Within 30 days of the effective date of this Order, Respondent shall provide a name change rider for Mined Land Reclamation Bond No. 104234733, MLF #40831, executed with Travelers Casualty and Surety Company of America, changing the name of the bond from Clark Companies to Burton F. Clark, Inc. The name change rider should be submitted to:

Ms. Jeannine Coons
NYS Department of Environmental Conservation
Division of Mineral Resources, 3rd Floor
625 Broadway
Albany, NY 12233-6500