

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 9111

December 7, 2018

Mr. George D. McHugh
General Counsel
Carver Sand & Gravel, LLC
494 Western Turnpike
Altamont, NY 12009

Re: Order on Consent
R4-2018-1114-202

Dear Mr. McHugh:

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

This will also acknowledge receipt of \$6,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff



Department of
Environmental
Conservation

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-

R4-2018-1114-202

Carver Sand & Gravel, LLC
494 Western Turnpike
Altamont, NY 12009,

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 Carver Sand & Gravel, LLC, is the owner of an approximately 105-acre limestone mine known as the “Masick Pit,” located on Cedar Lane on the east side of New York State Route 30 in Schoharie, New York (“Mine”).
3. Respondent was issued a Mined Land Reclamation renewal permit for mining activities (#4-4338-00004/00009) (the “Permit”) for the Mine, effective November 8, 2017 and expiring on November 6, 2022.
4. Respondent is a person as defined by ECL §§ 23-0101(12).

VIOLATIONS

Mined Land Use Plan Violation

5. On October 30 and 31, 2018, Department staff inspected the Mine and measured a mine face located in the northeast corner of the Mine site.
6. During the October 30 and 31, 2018 inspection, Department staff determined that the mine face in the area at issue extends to within approximately sixty (60) feet of an adjacent easement held by National Grid.
7. Respondent’s approved reclamation plan in its Permit requires that the mine face in the area at issue approach no closer than one hundred eighty (180) feet from the National Grid easement.

8. 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.”
9. Regulation 6 NYCRR § 422.1(a) likewise states: “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.”
10. Permit Special Condition No. 1 states, in relevant part, “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.”
11. Respondent’s extension of the mine face to within sixty (60) feet of the National Grid easement is a violation of ECL § 23-2713(1); 6 NYCRR §§ 422.1(a); and Permit Special Condition No. 1.

Mine Floor Height Violation

12. During the October 30 and 31, 2018 inspection, Department staff further observed that the mine face in the area at issue is approximately forty to forty-five (40-45) feet in height.
13. Regulation 6 NYCRR § 422.2(c)(3)(iii) states, in relevant part, that the perimeter of a mine floor shall not be established closer to “any easement within or adjacent to the affected land than [. . .] a distance equal to the sum of 25 feet plus one and one-quarter times the height of the mine face in a consolidated material, when the adjacent property is at a higher elevation than the affected land.”
14. Based on the height range of the mine face in the area at issue, the mine floor in this area should be no closer than between seventy-five and eighty-one (75-81) feet from the National Grid easement, per the formula set forth at 6 NYCRR § 422.2(c)(3)(iii).
15. Respondent’s creation of a Mine floor nearer to the National Grid easement than the statutorily required distance of approximately seventy-five to eighty-one (75-81) feet is a violation of 6 NYCRR 422.2(c)(3)(iii).

Waiver of Hearing

16. 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

17. 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 of SIXTEEN THOUSAND DOLLARS (\$16,000). SIX THOUSAND DOLLARS (\$6,000) of the civil penalty shall be paid by company or bank check, made payable to "NYS Department of Environmental Conservation," when the signed and notarized Order is returned to the Department. Payment of this portion of the civil penalty shall not alter Respondent's obligation to complete performance under the terms of the Order.

The balance of the penalty, TEN THOUSAND DOLLARS (\$10,000), is suspended and shall not be payable, **provided that** Respondent fully and timely complies with the requirements of this Order on Consent and its Schedule of Compliance. If Respondent fails to comply with any such requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance. 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. 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.

3(a). Respondent's modification application to be submitted pursuant to the Schedule of Compliance shall comply with the Uniform Procedure Act ("UPA") Regulations, 6 NYCRR Part 621, including § 621.4(i) governing applications under the Mined Land Reclamation Law ("MLRL"). The Department's review of Respondent's modification application will be conducted pursuant to the UPA and MLRL regulations.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department reasonably 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:

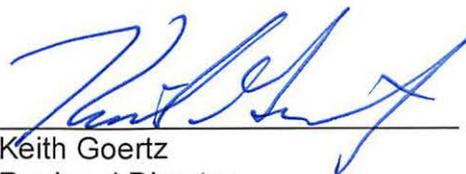
Carver Sand & Gravel, LLC
Attn: Carver Laraway
494 Western Turnpike
Altamont, NY 12009

XIII. **Termination.** The Order shall terminate upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: Rotterdam, New York
December 6, 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.

Carver Sand & Gravel, LLC
Authorized Representative

SIGNED: 

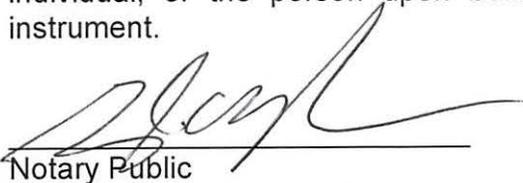
TITLE: MANAGING MEMBER

DATE: 11/30/2018

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

On the 30th day of November in the year 2018, before me, the undersigned, personally appeared CARVEN LARAWAY, personally known (Full name)

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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
Qualified in the County of:
My Commission Expires:
GEORGE D. MCHUGH
Notary Public, State of New York
Qualified in Albany County
Reg. No. 02MC6003748
Commission Expires March 9, 2022

SCHEDULE OF COMPLIANCE

1. **Within ninety (90) days of the effective date of this Order**, Respondent shall ***either***:
 - a. Backfill all areas affected by excavation within one hundred eighty (180) feet or fewer from the National Grid utility easement, to achieve the reclamation slopes shown on the approved reclamation plan (i.e., approximately 1V:4H for a distance of two hundred forty (240) feet from the easement, and 1V:2H thereafter);

-or-
 - b. Submit a permit modification application to revise the reclamation plan to reflect a changed, consolidated rock benching plan (i.e., the lateral extents of the benches to be buried under the overburden slopes that will backfill the quarry at final reclamation) and reclamation spoil back fill slope closer than previously approved.
 - i. If the benching plan includes a Mine floor closer than required by 6 NYCRR § 422.2(c)(3) (i.e., the sum of twenty-five (25) feet plus one and one-quarter (1.25) times the height of the Mine face), Respondent must include, in its permit modification application, a written agreement executed by National Grid, acknowledging that the utility has received copies of the proposed plans and understands and agrees to allow excavation closer than the regulatory requirement.
2. **Within ninety (90) days of the effective date of this Order**, Respondent shall place markers (e.g., large quarry blocks painted with a blaze) at the limit of the consolidated rock excavation along the eastern boundary of the Mine, adjacent to the National Grid easement. Any permit term markers along the eastern boundary of the Mine that have been removed must be re-installed.
3. **By May 31, 2019**, Respondent shall reclaim any affected areas outside the LOM, per the approved reclamation plan, including specifically:
 - a. All slopes must be graded to no steeper than 1V:2H;
 - b. Spread six (6) inches of soil over all affected areas;
 - c. Apply fertilizer, lime, seed, and mulch within forty-eight (48) hours of the application of fertile soil;
 - d. Vegetation must reach the regulatory requirement of 75% vegetative cover by the summer of 2020. MLRS Staff will conduct a reclamation inspection in the summer of 2020. If revegetation has not met the required cover by that time, Respondent shall be required to apply additional fertile soil, seed, fertilizer and mulch.
4. Compliance with this Schedule shall not be a defense to subsequent violations.