

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 7618

September 29, 2017

Mr. Fred Wagner
P.O. Box 518
Altamont, NY 12009

Re: Order on Consent
R4-2016-1115-160M2

Dear Mr. Wagner:

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

Enclosure

ec: P. Wyckoff
N. Baker



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

by

Order on Consent
File No. R4-2016-1115-160M2

Fred Wagner
P.O. Box 518
Altamont, NY 12009

Respondent

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 is a person, as that term is defined at ECL 23-2705 (12), and regulations at 6 NYCRR 420.1 (p).
3. Respondent owns/operates a mine located on Route 158 off Stitt Road, Guilderland, New York, (Albany County) ("site").

Facts

4. On April 4, 2017, Respondent entered into an Order on Consent (R4-2016-1115-160) ("Order"). On April 17, 2017, Respondent entered into a Modification of Order on Consent (R4-2016-1115-160M) ("Modified Order"). That Modified Order required in part, that Respondent:

"2. If the Respondent does not obtain a mining permit by July 3, 2017, the affected site must be reclaimed in accordance with the following schedule:

- a) By July 3, 2017, the affected area will be graded to 1V:2H or gentler*
- b) By July 31, 2017, the mine floor and roadways will be plowed or scarified to reduce compaction of those areas and topsoil spread across the entire site to a depth of 6."*
- c) By August 31, 2017, the area will be fertilized with a slow release nitrogen fertilizer at the rate of 300 pounds per acre, seeded with a conservation seeding mixture that contains at least 2 legumes (ex. clover & trefoil) at the rate of 80 pounds per acre, and mulched at a rate of 2,000 pounds per acre without bare spots."*

5. Paragraph I of the Order on Consent provided that:

“With respect to the aforesaid alleged violation, a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000) is hereby assessed against the Respondent of which TWO THOUSAND DOLLARS (\$2,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance TWO THOUSAND DOLLARS (\$2,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

In the event that Respondent fails to comply with the requirements of this Order, and fugitive dust continues to leave the site, regardless of the time of year, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by the Respondent.”

Violations

6. The Department did not receive from Respondent, a completed permit application, therefore Respondent did not obtain a mining permit by July 3, 2017 nor did he commence reclamation, which is in violation of Modified Consent Schedule of Compliance paragraph 2.

Civil Penalty

7. 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 eight thousand dollars (\$8,000) and an additional penalty of two thousand dollars (\$2,000) for each day during which such violation

8. 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

With respect to the aforesaid alleged violation, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) is hereby assessed against the Respondent of which ONE THOUSAND DOLLARS (\$1,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance ONE THOUSAND DOLLARS (\$1,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

II. Denial of Permit Application

In the event that Respondent violates this Order on Consent, Respondent agrees to a denial of his permit application upon receipt of a Notice of Violation setting forth the violations of the Schedule of Compliance. The issuance of the Notice of Violation and denial of permit application does not relieve Respondent of his obligations and requirements set forth in this Order's Schedule of Compliance.

III. Force Majeure

If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall make his best effort to comply nonetheless and shall, within seventy-two hours (unless notice is required sooner by State or Federal law), notify the Department by telephone and in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

IV. 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.

V. Access

Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

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

VII. 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.

VIII. 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.

IX. 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.

X. 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.

XI. 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:

October 29 2017
Rotterdam, New York

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

Fred Wagner

SIGNED: Fred Wagner

TITLE: President

DATE: 09/29/19

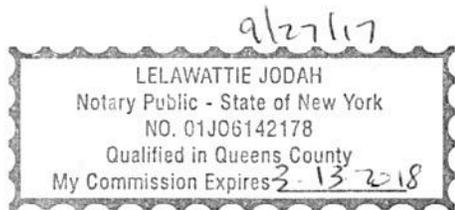
STATE OF New York

COUNTY OF Albany) ss.:

On the 27th day of September in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Fred Wagner 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.

Lelawattie Jodah
Notary Public

Qualified in the County of: Albany
My Commission Expires: 3-13-2018



Lelawattie Jodah

Schedule of Compliance

1. Respondent shall immediately cease mining at the site until a mining permit is issued.
2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a complete response to the Department's letters of November 25, 2016 and May 11, 2017. Failure to do so will result in the denial of Respondent's mining permit. If the permit is denied, the affected site must be reclaimed in accordance with the following schedule:
 - a) Within 30 days of the denial of the permit, the affected area will be graded to 1V:2H or gentler AND the mine floor and roadways shall be plowed or scarified to reduce compaction of those areas and topsoil spread across the entire site to a depth of 6."
 - b) Within 45 days of the denial of the permit, the area will be fertilized with a slow release nitrogen fertilizer at the rate of 300 pounds per acre, seeded with a conservation seeding mixture that contains at least 2 legumes (ex. clover & trefoil) at the rate of 80 pounds per acre, and mulched at a rate of 2,000 pounds per acre without bare spots.