

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
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www.dec.ny.gov

**CERTIFIED - RETURN RECEIPT REQUESTED**

7011 1570 0003 0363 3949

February 8, 2016

Mr. Gary Hillicoss  
Gary's RT 81 Stone Quarry, Inc.  
1235 State Route 81  
Climax, NY 12042

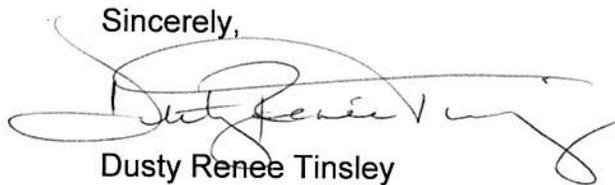
Re: Order on Consent  
R4-2015-0824-101  
MLF#40349  
Permit #4-1928-00015

Dear Mr. Hillicoss:

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

This will also acknowledge receipt of \$8000 of the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: P. Fraczek



Department of  
Environmental  
Conservation

**STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violations of  
Article 23 of the  
New York State Environmental  
Conservation Law

**ORDER ON CONSENT**

-by-

Gary's RT 81 Stone Quarry, Inc.,

R4-2015-0824-101  
MLF #40349  
Permit #4-1928-00015

Respondent.

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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, Gary's RT. 81 Stone Quarry, Inc., is the owner and/or operator of a stone quarry located at 1235 State Route 81, Climax, New York 12042 (Greene County)("Facility").

**ENVIRONMENTAL CONSERVATION LAW**

3. ECL §71-1305(2) states, "It shall be unlawful for any person to: . . . Violate any . . . order or condition of any permit of the department made pursuant thereto."

**FACILITY PERMIT**

4. Effective December 2, 2009, Respondent was issued an Article 23 Title 27 Mined Land Reclamation permit (#4-1928-00015/00001) ("Permit") for the Facility. The permit expired on December 1, 2014.
5. On October 30, 2014, Respondent submitted a permit renewal and modification application for the Facility. A revised application was submitted on December 8, 2014. Respondent's permit application is under review by Department staff.
6. The Permit states at Condition 1 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. Such plans were approved by Mined Land Reclamation Unit staff on November 23, 2009, and consist of the following items": the Typical Sections (A-A', B-B', C-C', D-D') prepared by George L. Marshall Engineering Geologists, dated May 17, 1990, and last revised on April 24, 2001 ("Typical Sections"), the Mining Plan Map, prepared by George L. Marshall LLC, dated May 9, 1990, and last revised on November 9, 2009 ("Mining Plan Map"), and the Reclamation Map Plan, prepared by George L. Marshall

Engineering Geologists, dated May 17, 1990, and last revised on April 24, 2001 (“Reclamation Map Plan”). (Emphasis deleted.)

### **INSPECTIONS**

7. Department staff conducted inspections of the Facility on September 18, 2014 and November 21, 2014. Violations of the ECL Article 23 and Permit were noted during the inspection.
8. Department staff sent the Respondent a Notice of Violation dated December 16, 2014 citing ECL Article 23 and Permit violations.

### **FIRST AND SECOND VIOLATIONS**

#### **Maintain Work Above Groundwater and No Mining Below Approved Grades – The Basin**

9. ECL §71-1305(2) states, “It shall be unlawful for any person to: . . . Violate any . . . order or condition of any permit of the department made pursuant thereto.”
10. The Permit states at Condition 15 “A minimum of five (5) feet of undisturbed material shall be maintained above seasonal high groundwater elevations at all locations.”
11. The Permit states at Condition 16 that “There shall be no mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine.”
12. During the inspection, Department staff observed an unpermitted basin in the eastern area of the Facility (“Basin”). Department staff believed that the Basin was below the five feet of undisturbed material that was required to be maintained above seasonal high groundwater elevations at all locations.
13. On July 31, 2015, a representative from Advanced Environmental Geology, on behalf of Respondent, spoke with Department staff and acknowledged, based on monitoring well results, that Respondent mined into the groundwater table and that the water in the Basin was groundwater.
14. Respondent’s failure to maintain a minimum of five feet of undisturbed material above seasonal high groundwater elevations at all locations at the Facility is a violation of ECL §71-1305(2) and the Permit at Conditions 1 and 15.
15. Respondent’s actions in mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine are violations of ECL §71-1305(2) and the Permit at Conditions 1 and 16.

### **THIRD AND FOURTH VIOLATIONS**

#### **No Mining Below Approved Grades – Mining Floor (Vertically)**

16. ECL §71-1305(2) states, “It shall be unlawful for any person to: . . . Violate any . . . order or condition of any permit of the department made pursuant thereto.”

17. The Permit states at Condition 15 “A minimum of five (5) feet of undisturbed material shall be maintained above seasonal high groundwater elevations at all locations.”
18. The Permit states at Condition 16 that “There shall be no mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine.”
19. The Typical Section, which is made a part of the Permit, states that the approximate water table around the location of the Basin is approximately 425 feet amsl.
20. Based on Permit Condition 15 and a water level of 425 feet amsl, Respondent was not to mine into the mining floor in the area of the Basin below 430 feet amsl.
21. Advanced Environmental Geology, on behalf of Respondent, submitted to the Department a Mining Plan Map dated October 23, 2014 for the Site (“Mining Plan Map”). The Mining Plan Map included mining elevations of 426.6 feet amsl and 421.4 feet amsl in the mining floor in the area around the Basin. These areas have been mined to elevations below the allowable 430 feet amsl and below the elevations or grades shown on the approved maps and cross-sections approved by the Permit.
22. Respondent’s actions in mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine are violations of ECL §71-1305(2) and the Permit at Conditions 1 and 15.
23. Respondent’s actions in mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine are violations of ECL §71-1305(2) and the Permit at Conditions 1 and 16.

#### **FIFTH VIOLATION**

##### **No Mining Below Approved Grades – Bench 1 (Horizontally)**

24. ECL §71-1305(2) states, “It shall be unlawful for any person to: . . . Violate any . . . order or condition of any permit of the department made pursuant thereto.”
25. The Permit states at Condition 16 that “There shall be no mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine.”
26. The Reclamation Map Plan details how to determine where the quarry face for each bench in the life of mine will be from a starting point along the C-C’ line approximately 80 feet northeast of the A-A’ intersect (“Starting Point”).
27. The Reclamation Map indicates that excavation is approved for 190 feet south-southeast from the Starting Point at which location Bench 1 is to start.
28. Department staff reviewed the Mining Plan Map. The Mining Plan Map shows an elevation level of 435.4 feet 220 feet from the Starting Point. This elevation level at 200 feet from the Starting Point evidences mining 30 feet further into the mining

wall than was approved in the Permit.

29. Respondent's actions in mining below the elevations or grades shown on the approved maps and cross-sections in any area of this mine are violations of ECL §71-1305(2) and the Permit at Conditions 1 and 16.

#### **SIXTH VIOLATION**

##### **Storage of Petroleum Products**

30. The Permit states at Condition 10 that "All petroleum products shall be stored in locked and secure enclosures."
31. During the September 18, 2014 and November 21, 2014 inspections, Department staff observed that two petroleum tanks at the Facility were not being stored in a locked and secure enclosure.
32. Respondent's failure to store all petroleum products in locked and secure enclosures are violations of the Permit at Condition 10.

#### **WAIVER**

33. 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**

34. 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 SIXTEEN THOUSAND DOLLARS (\$16,000) of which EIGHT THOUSAND DOLLARS (\$8,000) 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. EIGHT THOUSAND DOLLARS (\$8,000) 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 advise, 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:

Gary Hillicoss  
Gary's Rt 81 Stone Quarry, Inc.  
1235 State Route 81  
Climax, New York 12042

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

DATED: Rotterdam, New York  
February 8, 2016

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
Keith Goertz  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

Action to be taken	Deadline
<p>Respondent shall submit to the Department an engineering drawing of the hand drawn "Basin X-Section Proposed Fill &amp; Well Standpipe" submitted with Respondent's January 18, 2016 email to the Department ("Construction Plan"). The Construction Plan will revise the hand drawn proposal to replace "compacted stone dust or compacted Item 4 subbase" with crushed limestone stone dust. The Construction Plan shall also include protection of the standpipe from damage due to mining operations.</p> <p>Respondent shall implement the Construction Plan.</p>	<p>Within sixty days of the effective date of this Order.</p> <p>May 30, 2016</p>
<p>Respondent shall submit a plan to the Department for review and approval for relocation of the two petroleum storage tanks downgradient from the Basin to include secondary containment of the tanks ("Tank Plan").</p> <p>Respondent shall implement the Tank Plan.</p>	<p>Within sixty days of the effective date of this Order.</p> <p>May 30, 2016</p>