

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 7878

December 6, 2016

Brian Valade
J Dunn Group, LLC
P.O. Box 1
Castleton, New York 12033

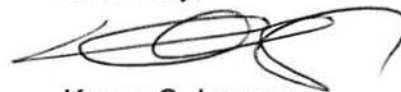
Re: Order on Consent
R4-2016-0422-83

Dear Mr. Valade:

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

This will also acknowledge receipt of \$1,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Evans

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. R4-2016-0422-83

J Dunn Group, LLC
P.O. Box 1
Castleton, NY 12033

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 Old Schaghticoke Road (Route 67) in Schaghticoke, New York ("site").
4. Department staff inspected the mine on April 6, 2016 and April 19, 2016.
5. As of July 15, 2015, a farm pit existed at the property. Prior to that date, approximately 1,500 cubic yds had been removed.
6. On February 24, 2016, the Department received a request from Respondent for a mining permit.
7. On April 6, 2016, Department staff inspected the site and determined that the size of the farm pit had increased by approximately 3,000 cubic yards. Respondent was advised at that time that no further mining could take place until a permit is issued.
8. On April 19, 2016, Department staff inspected the site and determined that the size of the farm pit had once again increased, this time by approximately 2,750 cubic yards.

9. ECL 23-2711(1) provides 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. A separate permit shall be obtained for each mine site.*”

10. Regulations at 6 NYCRR 421.1 (a) provide that: “*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 one hundred 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. A separate permit shall be obtained for each mine site.*”

11. Respondent’s mining without a permit are violations of ECL 23-2711(1) and regulations at 6 NYCRR 421.1 (a).

12. Respondent has affirmatively waived its 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 violations, a civil penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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.

II. 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 its 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.

III. 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.

IV. 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.

V. 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, its employees, servants, agents, successors or assigns.

VI. Successors and Assigns

The provisions of this Order shall be deemed to bind Respondent, its agents employees, successors, and assigns, and all persons, firms, and corporations acting under or for Respondent.

VII. 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.

VIII. 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.

IX. 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.

X. 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: *December 5* 2016
Rotterdam, New York

Basil Seggos
Acting 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.

J Dunn Group, LLC

SIGNED: 

TITLE: Partner

DATE: 11/23/16

STATE OF _____)

COUNTY OF _____) ss.:
_____)

On the 23 day of November in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Jeff Dunn 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.



Notary Public
Qualified in the County of:
My Commission Expires:

KEVIN R. ALLEN
Notary Public, State of New York
No. 01AL6185809
Qualified in Saratoga County
Commission Expires April 21, 2020