

**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  
7016 0340 0000 4616 5263

January 20, 2017

Mr. Bruce Taylor  
Logs Unlimited, LLC  
2800 County Highway 21  
Walton, NY 13856

Re: Order on Consent  
R4-2016-1117-164

Dear Mr. Taylor:

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: P. Wyckoff  
D. Wakin



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Order on Consent  
File No. R4-2016-1117-164

by

Logs Unlimited, LLC  
2800 County Highway 21  
Walton, NY 13856

Respondent  
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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 Murphy Hill Road, Walton, New York, (Delaware County) ("site").
4. Department staff inspected the mine on July 13, 2016 and November 4, 2016.
5. In 2015, Respondent inquired with the Department regarding a proposal to store waste rock and the placement of a crusher outside the Life of Mine ("LOM") boundary. In a letter dated December 8, 2015 (Attached as Exhibit 1), Department staff advised Respondent that a modification application would be required to expand the LOM along the haul road for the placement of waste roc, including an EAF for SEQR review.

Violation

6. On July 13, 2016, Department staff inspected the site and observed that spoil rock had been placed outside the LOM along the haul road. The LOM depicted on the approved Mine Plan is 50 ft wide. The road plus the spoil rock placed along the road is approximately 125ft wide.

7. A Notice of Violation (“NOV”) letter was sent to Respondent on August 3, 2016 (Attached as Exhibit 2) requiring that a modification application was to be submitted to the Department by August 31, 2016. Respondent was informed that no additional spoil rock was to be placed outside the currently approved LOM boundary prior to the issuance of a modified permit.

8. On November 4, 2016, Department staff inspected the site and observed that additional spoil rock had been placed outside the LOM along the haul road.

9. No modification was received by the Department.

10. In 2015, Respondent had inquired about the installation of a crusher on the site but outside of the LOM. Department staff’s letter of December 8, 2016 also informed them that a modification of the permit would be required.

11. At the time of the July 13, 2016 inspection, Department staff observed that approximately 1.3 acres down gradient from the access road had been affected by what appears to be mining activity, including a ledge of bluestone that had been cut for manual removal of stone. At that time, Respondent advised Department staff that the area had been prepared for a crusher to process spoil rock from the mine. After receiving the December 8, 2016 letter from Department staff, Respondent did not reclaim the site. The August 3, 2016 letter from Department staff required reclamation of the crusher site by September 15, 2016. At the time of the November 4, 2016 inspection, Department staff observed that the crusher site had not been reclaimed.

12. 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.”*

13. Respondent violated regulations at 6 NYCRR 422.1(a) by deviating from the mined land-use plan by widening the access road by placement of spoil rock outside the LOM boundary and by failing to reclaim the crusher site.

14. 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 violation, a civil penalty in the amount of SEVEN THOUSAND DOLLARS (\$7,000) is hereby assessed against the Respondent of which FIVE THOUSAND DOLLARS (\$5,000) 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.

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: *January 20* 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 its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Logs Unlimited, LLC

SIGNED: Bruce Francis Taylor

TITLE: Member President

DATE: 1/14/17

STATE OF Pennsylvania

COUNTY OF Susquehanna ) ss.:

On the 14<sup>th</sup> day of JANUARY in the year 2014, before me, the undersigned, a Notary Public in and for the State, personally appeared Bruce Francis Taylor 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.

Heather Merrell  
Notary Public  
Qualified in the County of: Susquehanna  
My Commission Expires: March 15, 2020

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Heather Merrell, Notary Public  
Great Bend Boro, Susquehanna County  
My Commission Expires March 15, 2020

## Schedule of Compliance

1. By May 31, 2018:
  - a. The crusher site down gradient from the access road must be reclaimed in accordance with the approved Mined Land Use Plan, including the following:
    - i. Any spoil rock must be pushed against the highwall to reduce the height with slopes not to exceed 1V:2H;
    - ii. 6" of fertile cover material must be spread over the spoil rock;
    - iii. Seed, fertilizer, lime, and mulch applied;
    - iv. 75% vegetated cover must be achieved in the 2018 growing season.
  
2. Within 90 days of the effective date of this Order:
  - a. A complete modification application must be submitted to the Department with a proposal to modify the Life of Mine boundary to store spoil rock along the access road, including all documents and information outlined in the December 8<sup>th</sup>, 2015 letter, including:
    - i. Adequate stripping and storage of topsoil prior to placement of spoil rock, including a summary of the existing soils.
    - ii. Stormwater controls to prevent erosion and discharge of stormwater from the site.
    - iii. Plans must include measures employed to ensure spoil materials will not creep or tumble downslope and affect area outside the LOM.
    - iv. Minimize the removal of trees and the potential for visual impacts to receptors in the valley and village. The natural slope, operating slope of the pile, elevation of the top of the pile and the height of the trees for visual screening should be considered. Line of site profiles from potential sensitive visual receptors may be required.
    - v. An increase of the LOM on the east side of the mine or along the haul road would bring mining activity (e.g. stripping, dumping of spoil, grading, etc) closer to homes; a noise impact study may be required.
    - vi. The reclamation plan and map must be revised to address the proposed waste rock pile, including "redistribution" of the piled material. Options include:
      1. crush and sell the waste rock.
      2. grade the waste rock in the storage area to a slope of 1V:2H\*, Reclaim by covering with topsoil and re-vegetate according to the Reclamation Plan.
      3. Redistribute the waste rock by transporting the rock back into the mine excavation and reclaiming according to the Reclamation Plan.

\*Note: - According to 6 NYCRR Part 422.3(d)(2)(v)(b), a working talus slope can be at 1V:1.25H, but the slope must be 1V:2H when covered and re-vegetated at final reclamation, as described in approved reclamation plan.