

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
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CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0000 2327 0407

November 30, 2015

Mr. Larry Schaefer
R.C.S., LLC
315 Old Route 10
Deposit, NY 13754

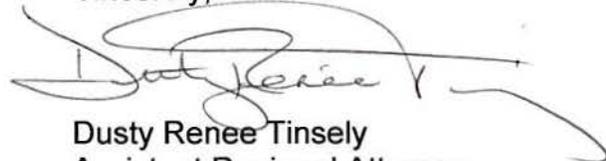
Re: Order of Consent
R4-2015-0915-105
MLF#40739
Permit # 4-1299-00035/00001

Dear Mr. Schaefer:

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,



Dusty Renee Tinsely
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff

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
6 NYCRR Part 422

ORDER ON CONSENT

-by-

R.C.S., LLC,

R4-2015-0915-105
MLF #40739
Permit #4-1299-00035/00001

Respondent.

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, R.C.S., LLC, is the owner and/or operator of a surface consolidated bluestone mine located at Roods Creek Road, Hancock, New York 13754 (Delaware County)("Facility").

FACILITY PERMIT

3. Effective October 1, 2010, Respondent was issued an Article 23 Title 27 Mined Land Reclamation permit (#4-1299-00035/00001) ("Permit") for the Facility. The permit expires on September 30, 2015.
4. Respondent submitted a permit renewal for the Facility on or about September 11, 2015. Department staff are reviewing the permit renewal. The permit renewal was submitted after the August 30, 2015 deadline that would have allowed for a SAPA extension and therefore Respondent may not continue mining operations after September 30, 2015 while the renewal application is processed.
5. 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 October 8, 2009, and consist of the following items": Mine Site Plan Map – Roods Creek Quarry, Sheet B-1, prepared by Thomas Decker, Central Testing & Engineering, dated May 20, 2004 ("MSPM") and Mining, Reclamation and Erosion & Sediment Control Plan, prepared by Thomas Decker, Central Testing & Engineering, dated August 24, 1998 ("Control Plan").

INSPECTIONS

6. Department staff conducted inspections of the Facility on September 17, 2014 and September 17, 2015. Violations of the ECL Article 23, 6 NYCRR Part 422, and the Permit were noted during the inspections.
7. Department staff sent the Respondent a Notice of Violation dated August 17, 2015 citing ECL Article 23, 6 NYCRR Part 422, and Permit violations.

FIRST VIOLATION

8. 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."
9. The Permit states that the "permittee shall provide permanent markers such as stakes, posts or other devises acceptable to the Department to identify and delineate the permit area, as outlined in the approved Mining Plan Map. These markers are to be installed prior to the start of mining and shall be maintained for the duration of the permit term." (Permit at Condition 6)
10. During the September 17, 2014 inspection, Department staff observed that Respondent failed to maintain permanent markers such as stakes, posts or other devises acceptable to the Department to identify and delineate the permit area, as outlined in the MSPM.
11. Respondent's failure to maintain permanent markers such as stakes, posts or other devises acceptable to the Department to identify and delineate the permit area, as outlined in the MSPM is a violation of ECL §71-1305(2) and the Permit at Conditions 1 and 6.

SECOND VIOLATION

12. 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."
13. 6 NYCRR Part 422.1(a) states 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."
14. In August of 2015, Department staff determined through aerial photography overlay, that Respondent mined outside of the Life of Mine designated in the MSPM.
15. Respondent's actions in mining outside the Life of Mine as designated in the MSPM are violations of ECL §71-1305(2), 6 NYCRR Part 422.1(a), and the Permit at Condition 1.

WAIVER

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 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 EIGHT THOUSAND DOLLARS (\$8,000) 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. THREE THOUSAND DOLLARS (\$3,000) 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.

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 advice, 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:

Larry Schaefer
R.C.S., LLC
360 State Highway 10
Deposit, New York 13754

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

DATED: Rotterdam, New York
November 30, 2015

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent R.C.S., LLC 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.

BY: Larry Schaefer member

TITLE: MEMBER

DATE: 11/11/15

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

On the day of in the year 2015, before me, the undersigned, personally appeared LARRY SCHAEFER (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 315 OLD RT 10 DEPOSIT NY 13754 (full mailing address) and that he is the MEMBER (president or other officer or director or attorney in fact duly appointed) of the R.C.S. LLC (full legal name of corporation) the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.



Notary Public, State of New York
Qualified in the County of
My commission expires on

JOAN G. MCHUGH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MC6305207
Qualified in Delaware County
My Commission Expires June 02, 2018

SCHEDULE OF COMPLIANCE

Action to be taken	Deadline
Respondent shall immediately cease all mining activities outside of the approved Life of Mine as designated in the MSPM.	Effective immediately.
Respondent must reclaim the mine by May 30, 2016, consistent with the standards established in the Control Plan, if Respondent fails to obtain a valid permit for mining land that is outside the Life of Mine as designated in the MSPM.	May 30, 2016.
Respondent shall maintain the permanent markers for the duration of the permit term.	Effective immediately.
Respondent shall submit to the Department the attached Compliance Verification Affidavit signed and notarized.	Within ten days of the effective date of this Order.

COMPLIANCE VERIFICATION AFFIDAVIT

ORDER ON CONSENT

R4-2015-0915-105

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Conservation Law

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R.C.S., LLC,

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MLF #40739

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Respondent.

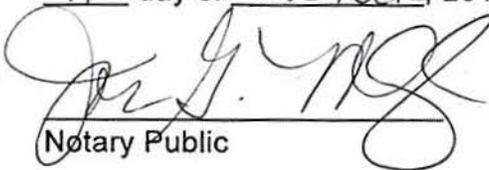
I, LARRY SCHAEFER (name), the MEMBER (position) of R.C.S., LLC, being duly sworn, do depose and say that R.C.S., LLC shall:

1. maintain the permanent markers installed by Respondent to identify and delineate the permit area, as outlined in the MSPM, for the duration of the permit term; and
2. as of the effective date of this Order, ceased all mining activities outside of the approved Life of Mine as designated in the MSPM.

Larry Schaefer member
Name

11/11/15
Date Signed

Sworn to before me on the
11 day of NOVEMBER, 2015


Notary Public

JOAN G. MCHUGH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MC6305207
Qualified in Delaware County
My Commission Expires June 02, 2018