

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 7762

September 22, 2016

Robert J. Deily, Esq.
Deily & Schaefer
One Bridge Street
Catskill, NY 12414

Re: Order on Consent
R4-2016-0610-110
The Estate of Richard F. Albright
Roger C. Albright - Administrator

Dear Mr. Deily:

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

This will also acknowledge receipt of \$3000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Evans



Department of
Environmental
Conservation

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 Parts 420 and 421

ORDER ON CONSENT

-by-

R4-2016-0610-110

The Estate of Richard F. Albright
Roger C. Albright – Administrator,

And

Roger C. Albright
1998 Old Kings Road
Saugerties, New York 12477,

Respondents.

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.

RESPONDENTS

2. 6 NYCRR Part 420.1(p) states that the term “*Person* means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.”
3. Respondent, The Estate of Richard F. Albright, Administrator Roger C. Albright, is the owner of property located on the southwest side of Schoharie Turnpike, north of Vosenkill Road and south of Old Green Lake Road, Athens, New York, 12414 (Greene County), Parcel ID 104.00-1-6, at which mining has occurred (“Mine”).
4. Respondent, Roger C. Albright, is mining the Mine.
5. Respondents are “persons’ pursuant to 6 NYCRR Part 420.1(p).

VIOLATION

6. 6 NYCRR Part 421.1(a) states “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 100 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.”

7. Department staff conducted an inspection of the Mine on May 3, 2016 with Respondent Roger C. Albright.
8. During this inspection, Respondent Roger C. Albright stated that he mined approximately 3000 cubic yards of sand/gravel material from the Mine from February of 2015 through February of 2016.
9. Department staff determined during the March 29, 2016 inspection that Respondent Roger C. Albright mined in excess of 750 cubic yards of minerals from the Mine within 12 successive calendar months without a permit.
10. Respondent Roger C. Albright’s removal of more than 750 cubic yards of minerals from the Mine within 12 successive calendar months without a written authorization or a permit is a violation of 6 NYCRR Part 421.1(a).

WAIVER

11. Respondent has affirmatively waived his 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

12. 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 THREE THOUSAND DOLLARS (\$3,000) which 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.

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 Respondents:

(1) Robert J. Deily, Esq.
Deily & Schaefer
One Bridge Street
Catskill, NY 12414

Representing: Estate of Richard F. Albright
Administrator – Roger C. Albright

(2) Roger C. Albright
1998 Old Kings Road
Saugerties, NY 12477

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

XIV. Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: Rotterdam, New York
Sept. 21, 2016

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent Estate of Richard F. Albright 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.

Name (Print): Richard C Albright

Admin of Estate of Richard F Albright 9/21/16

Signature: [Handwritten Signature]

Date: 9/21/16

STATE OF NEW YORK)

) ss.:

COUNTY OF Schenectady)

On the 21st day of September in the year 2016, before me, the undersigned, personally appeared Richard C Albright (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 1998 Old Kings Highway, Saugerties, NY 12477 (full mailing address) and that he/she/they is (are) the Administrator (authorized representative) of the Estate of Richard F. Albright (Estate) 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 Estate.

[Handwritten Signature]
Notary Public
Qualified in the County of: Albany
My commission expires:

DUSTY R TINSLEY
Notary Public, State of New York
Qualified in Albany County
No. 02TI6330988
My Commission Expires Sept 28, 2019

CONSENT BY RESPONDENT

Respondent Roger C. Albright 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.

Name (Print): Roger C. Albright

Signature: Roger C. Albright

Date: 9/21/16

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

On the 21st day of September in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Roger C. Albright, 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 the which the individual acted, executed the instrument.

[Signature]
Notary Public
Qualified in the County of: Albany
My commission expires:

DUSTY R. TINSLEY
Notary Public, State of New York
Qualified in Albany County
No. 02TI6330988
My Commission Expires Sept 28, 2019

SCHEDULE OF COMPLIANCE

1. Within 45 days of the effective date of this Order, Respondent must reclaim the Mine by doing as follows:
 - a. All sand/gravel material stockpiled on-site must be used for grading the site or must be removed;
 - b. All cobble piles, boulders, trees, stumps, and brush shall be removed or buried in the mine floor (not side slopes) and covered with at least two feet of compacted soil;
 - c. Incorporate all overburden soil material into reclaiming the site;
 - d. All refuse, spoil, unused mineral stockpiles and personal property shall either be removed for the permit area or utilized during reclamation of the Mine;
 - e. Grade affected slope 33 degrees or less, or a slope of one vertical on one and one-half horizontal or gentler;
 - f. Grade mine floor so that all stormwater remains on-site;
 - g. Apply a minimum of six inches of fertile soil capable of sustaining the planted vegetation, amending the soil with the aged manure/compost stockpile already on site;
 - h. Contact the Greene County Soil and Water Conservation District at the following address and:
 - i. perform a soil test to determine the pH of the soil and apply lime as per the Greene County Soil and Water Conservation District's recommendations; and
 - ii. obtain the appropriate vegetation seeding requirements, seed application rates, and fertilizer requirements per the affected acreage for the type of soil and drainage at the Mine;
- Greene County Soil and Water Conservation District
907 Greene County Office Building
Cairo, New York 12413
Phone: 518-622-3620
Fax: 518-622-0344
- i. Mulch at a rate of 2000 pounds per acre with no bare spots; and
 - j. Obtain 75% vegetative coverage with no gullies or rills. Respondent may contact Department staff for a reclamation inspection earlier than 45 days from the effective date of this Order if they believe that 75% vegetative coverage has been achieved prior to the 45 day deadline. The determination as to whether 75% vegetative coverage has been achieved is to be determined by Department staff.
2. If 75% vegetative coverage is not obtained pursuant to Paragraph 1(j) of this Schedule of Compliance, Respondent shall apply additional applications of fertile soil, seed, fertilizer, and mulch as necessary to achieve 75% vegetative coverage within 75 days of the effective date of this Order.