

**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  
7017 1070 0001 0125 8794

July 24, 2018

Robert J. Boll, III  
P.O. Box 408  
Niverville, NY 12130

Re: Order on Consent  
R4-2018-0618-150

Dear Mr. Boll:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher  
Assistant Regional Attorney  
Region 4

Enclosure

ec: J. Perry  
P. Wyckoff



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  
Title 6 of the Official Compilation of the  
New York State Code of  
Rules and Regulations

**ORDER ON CONSENT**  
R4-2018-0618-150

-by-

Robert J. Boll III  
P.O. Box 408  
Niverville, NY 12130,

Respondent.

-----

**WHEREAS:**

**Jurisdiction**

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over Mined Land Reclamation pursuant to Article 23, Title 27 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”).
2. Respondent, Robert J. Boll III, is the owner of a 20.26 acre sand and gravel mine known as “Pond Hill Road Mine,” located in Chatham, New York (“Mine”).
3. Respondent was issued a Mined Land Reclamation permit, via permit transfer, for mining activities (#4-1026-00103/00001) (the “Permit”) for the Mine, effective March 4, 2015 and expiring on January 25, 2020.
4. Respondent is a person as defined by ECL §§ 23-0101(12).

**VIOLATIONS**

**Life of Mine Violation**

5. On May 22, 2018, Department staff conducted a routine inspection of the Mine site.
6. During the May 22, 2018 inspection, Department staff observed shale mining along the eastern perimeter of the Mine, affecting approximately one acre.
7. The Permit currently authorizes the mining of sand and gravel only.
8. Shale mining is neither described in Respondent’s Mined Land Use Plan nor in any document approved in Permit Special Condition No. 1.

9. ECL § 23-2713(1) requires that “[a]ll mining and reclamation activities on the affected land shall be conducted in accordance with an approved mined land-use plan.”
10. Regulation 6 NYCRR § 422.1(a) likewise requires that “[a]fter 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.”
11. Respondent’s shale mining at the Mine constitutes an ongoing violation of ECL § 23-2713(1) and 6 NYCRR § 422.1(a).

Permit Violations: Mine Phase 2

12. ECL § 71-1305(2) states that it shall be unlawful for any person to violate “any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.”

13. Permit Special Condition No. 16 states:

Prior to the commencement of mining or mining related activities in Phase 2 the Permittee shall clearly delineate in the field the boundaries of “Prehistoric Site 3” identified in the report titled “Phase I Cultural Resource Investigations for the Pond Hill Site”, dated 7/24/95, and the associated map titled “Map of Cultural Resource Investigations for the Pond Hill Road Site Improvements (Development)”, dated 7/21/95, prepared by Collamer and Associates, and shall either:

- a) completely avoid any disturbance of this sensitive area, and revise the approved reclamation plans to reflect this avoidance and reduction in the mining area, or;
- b) conduct the appropriate Stage II archeological surveys by a qualified archeological consultant, for this area, and have the surveys reviewed and approved by the Department and if deemed necessary, by the NYS Office of Parks, Recreation and Historic Preservation, and conduct any recommended mitigation measures (if required) including but not limited to: avoidance of sensitive areas, and/or the recovery/preservation of artifacts.

13. Permit Special Condition No. 17 states: “Within 3 years of the effective date of this permit the appropriate Stage II archeological surveys for “Prehistoric Site 3” (identified on the map referenced in Special Condition 2a) shall be completed and submitted to the Department for review.

14. Department staff note that Mine Phase 2 has been affected by mining activity since 2008.

15. Department staff further note that Respondent has not submitted either a Phase II archaeological survey, due by March 4, 2018, or a revised reclamation plan to reflect avoidance of Prehistoric Site 3.

16. Respondent’s failure to submit either a Phase II archaeological survey or revised reclamation plan is a violation of ECL § 71-1305(2), as well as Special Condition Nos. 16 and 17.

## Permit Violations: Mine Phase 4

17. Permit Special Condition No. 19 states:

Prior to the commencement of mining or mining related activities in Phases 4 and 5 the Permittee shall clearly delineate in the field the boundaries of "Prehistoric Site 1, Prehistoric Site 2 and the Historic Scatter area" identified in the report titled "Phase I Cultural Resource Investigations for the Pond Hill Site", dated 7/24/95, and the associated map titled "Map of Cultural Resource Investigations for the Pond Hill Road Site Improvements (Development)", dated 7/21/95, prepared by Collamer and Associates, and shall either:

- a) completely avoid any disturbance of this sensitive area, and revise the approved reclamation plans to reflect this avoidance and reduction in the mining area, or;
- b) conduct the appropriate Stage II archeological surveys by a qualified archeological consultant, for this area, and have the surveys reviewed and approved by the Department and if deemed necessary, by the NYS Office of Parks, Recreation and Historic Preservation, and conduct any recommended mitigation measures (if required) including but not limited to: avoidance of sensitive areas, and/or the recovery/preservation of artifacts

18. Respondent added Mine Phase 4 to the Mine's permit term affected area during its 2015 renewal process.

19. Department staff reiterate that Respondent has not submitted a Phase II archaeological survey, and further note that Respondent has not submitted a revised reclamation plan to reflect avoidance of Prehistoric Sites 1 and 2 and the Historic Scatter area.

20. Respondent's failure to submit either a Phase II archaeological survey or revised reclamation plan prior to commencing mining activity in Phase 4 is a violation of ECL § 71-1305(2) and Special Condition 19.

### **Waiver of Hearing**

21. 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**

22. ECL § 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 (\$8,000) and an additional penalty of two thousand dollars (\$2,000) for each day during which such violation continues . . . ."

**NOW**, being duly advised and having considered this matter, it is **ORDERED THAT:**

I. **Civil Penalty.** Respondent is assessed a civil penalty in the amount ONE THOUSAND DOLLARS (\$1,000). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by company or bank check, or money order, payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent's obligation to complete performance of the terms of this Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner's name, facility name and address, contact name, 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 under or controlled by it.

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 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 the provisions hereof by Respondent, its directors, officers, employees, agents, successors or assigns.

VII. **Modification.** No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee, such change to be made only upon written agreement of the parties.

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 for the Department 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. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

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 for any other violations of the ECL, rules or regulations promulgated thereunder;

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, 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 Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed 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 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 the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal 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 submittal 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. **Communications.** Communications shall be sent to:

For Department:

New York State Department of Environmental Conservation  
Region 4  
Attn: Jennifer Perry  
1130 North Westcott Road  
Schenectady, NY 12306

All submittals relating to the Mined Land Reclamation violation shall have the following information: owner's name, facility name and address, and the MLF identification number.

For Respondent:

Robert J. Boll, III  
P.O. Box 408  
Niverville, NY 12130

DATED: Rotterdam, New York  
July 23, 2018

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



---

Keith Goertz  
Regional Director  
Region 4

**CONSENT BY RESPONDENT**

Respondent, Robert J. Boll III, 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.

SIGNED: *Robert J Boll III*

PRINTED: Robert J Boll III

DATE: July 18 2018

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

On the 18 day of July in the year 2018, before me, the undersigned, personally appeared Robert J Boll III, personally known (Full name)

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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Anne C Carlisle*

Notary Public  
Qualified in the County of: Columbia  
My Commission Expires: 03/10/2022

ANNE C CARLISLE  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01CA6298240  
Qualified in Columbia County  
Commission Expires 03/10/2022

## SCHEDULE OF COMPLIANCE

1. **Effective immediately**, Respondent shall cease all shale mining.
2. **Within two (2) weeks of the effective date of this Order**, Respondent shall indicate to the Department in writing which of the following actions Respondent will take. **EITHER:**
  - a. **Within thirty (30) days of the effective date of this Order**, Respondent shall place permeable sand and gravel, to a depth of three feet, on top of all exposed shale, and shall reclaim the affected area in accordance with its approved reclamation plan;

**OR:**

  - b. **Within ninety (90) days of the effective date of this Order**, Respondent shall submit a modification application to add shale mining to the permit. Any modification application must include:
    - i. A narrative including that shale will be mined at the location, all proposed mining methods; excavation area details; and future shale excavation plans.
    - ii. An updated mining plan map, which details the full extent of all current and planned shale mining. If Respondent requests any changes to reclamation grades or the currently approved mine floor, Respondent shall also submit an updated reclamation map.
3. **Within fifteen (15) days of the effective date of this Order**, Respondent shall clearly delineate in the field, with permanent posts and snow fence, all archaeologically sensitive areas, in all phases of the Life of Mine. Respondent must submit to the Department photos of the posts and snow fence (submission via email is acceptable).
4. **Effective immediately**, Respondent shall cease all mining activity in Phase 2, until either Special Condition #16 or #17 is fulfilled.
5. **Within fifteen (15) days of the effective date of this Order**, Respondent shall indicate to the Department in writing which of the following actions Respondent will take. **EITHER:**
  - a. **Within sixty (60) days of the effective date of this Order**, Respondent shall submit to the Department a statement that the Prehistoric Site 3 will not be affected, along with an updated reclamation map showing no grading in this area;

**OR:**

- b. **Within ninety (90) days of the effective date of this Order**, Respondent shall submit a Phase 2 archaeological survey to the Department and to OPRHP.
- 6. **Effective immediately**, Respondent shall cease all mining activity in Phase 4, until Special Condition #19 is fulfilled.
- 7. **Within fifteen (15) days of the effective date of this Order**, Respondent shall indicate to the Department in writing which of the following actions Respondent will take. **EITHER:**
  - a. **Within sixty (60) days of the effective date of this Order**, Respondent shall submit to the Department a statement that the Prehistoric Sites 1 and 2 will not be affected, along with an updated reclamation map showing no grading in this area;
- OR:**
  - b. **Within ninety (90) days of the effective date of this Order**, Respondent shall submit a Phase 2 archaeological survey of Prehistoric Sites 1 and 2 to the Department and to OPRHP.
- 8. Compliance with this Schedule shall not be a defense to subsequent violations.