

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
7013 1090 0002 3365 3786

April 14, 2015

Mr. Lester A. Sittler, Esq.
Fly Creek Station
Cemetery Road
P.O. Box 235
Fly Creek, NY 13337

Re: Order of Consent
Seward Sand & Gravel, Inc.
R4-2013-0916-115

Dear Mr. Sittler:

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

This will also acknowledge receipt of \$1,750 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff

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. R4-2013-0916-115

Seward Sand & Gravel, Inc.
532 County Highway 58
Oneonta, NY 13820

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 6 NYCRR 420.1 (p).
3. Respondent was issued a Mined Land Reclamation Permit (ID # 4-3640-00010/00003), which was renewed on October 1, 2008 and modified on July 5, 2013, to mine a sand and gravel mine known as Oneonta Bank (Hemlock Road), located at 532 Co Rte 58, Oneonta, New York ("mine").
4. Department staff inspected the mine on August 23, 2013 and October 17, 2014.

Violations

5. At the time of the October 17, 2014 inspection, Department staff observed the loader operator constructing a cobble (aggregate) pile by placing material on the side of the large topsoil stockpile in the center of the processing plant area.
6. Special Condition #6 of Respondent's Mined Land Reclamation Permit provides that *"Prior to the excavation of previously undisturbed areas, topsoil and overburden shall be stripped, stockpiled separately, and used for reclamation of mined areas. These stockpiles shall be seeded to establish a vegetative cover within 30 days, or as soon as practicable following their construction. The permittee shall locate all overburden stockpiles within the permitted area of the approved Life of Mine. Sufficient quantities of topsoil must be retained on the site for use in reclamation, unless prior approval is granted by the Department."*

7. At the time of the August 23, 2013 inspection, Department staff observed what appeared to be flood debris dumped in the mine without prior approval. In addition there were concrete slabs and concrete debris piled in the mine and concrete slabs were being buried in the floor of the mine.

8. At the time of the October 17, 2014 inspection, Department staff observed several piles of either poorly screened manufactured topsoil or barnyard scrapings in the southern portion of the equipment yard behind the office building. These piles included fragments of waste including agricultural plastic, bailing twine, polyethylene drain pipe, electrical conduit and miscellaneous metal fragments. Waste debris including construction demolition debris (waste lumber), used oil drums, plastic pipes, a boat and various scrap metals were observed in the equipment yard.

9. Special Condition #9 of Respondent's Mined Land Reclamation Permit provides that *"There shall be no importation of material originating from outside the limits of the life of mine, except as outlined in the Mined Land Use Plan or without prior approval from the Mined Land Reclamation Specialist."*

10. ECL 71-1305(2) provides that it shall be unlawful for any person to: *"Violate any of the provisions of or fail to perform 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."*

11. Respondent's violation of Special Conditions #6 and #9 of its Mined Land Reclamation Permit are violations of ECL 71-1305(2).

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 FOUR THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$4,750) of which ONE THOUSAND DOLLARS SEVEN HUNDRED FIFTY (\$1,750) 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 THREE THOUSAND DOLLARS (\$3,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order 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 Respondent.

II. Compliance Schedule

Respondent shall commence implementation of the activities described in the attached Compliance Schedule, which is an enforceable part of this Order, in accordance with its terms. Respondent shall meet the schedule therein.

III. 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.

IV. 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.

V. 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.

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 this Order by Respondent, its employees, servants, agents, successors or assigns.

VII. 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.

VIII. 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.

IX. 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.

X. 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.

XI. 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: *April 14* 2015
Rotterdam, New York

Joseph J. Martens
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.

Seward Sand & Gravel, Inc.

SIGNED: David Beiser

TITLE: Pres

DATE: 4-8-15

STATE OF New York

) ss.:
COUNTY OF Otsego

On the 8th day of April in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared David Beiser 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.

Susan M. Gelatt

Notary Public

Qualified in the County of: Otsego

My Commission Expires: 1/31/19

SUSAN M. GELATT
Notary Public, State of New York
No. 4731789
Qualified in Otsego County
Commission Expires 1/31/19

SCHEDULE OF COMPLIANCE

- 1) By June 1, 2015, all imported materials, including but not limited to, buried concrete, concrete debris, compost material, etc., must be removed outside of the Life of Mine. Construction materials and waste debris not related to mining, including but not limited to, the boat, vehicles, drums, wood, waste and scrap metal must be removed outside of the Life of Mine. The material must be properly disposed of or relocated.
- 2) By June 1, 2015, the cobble pile on site must be segregated and stored separate from the topsoil pile.