

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3764

October 8, 2013

Andrew W. Gilchrist
Tuczinski, Cavalier & Gilchrist, P.C.
54 State Street
Suite 803
Albany, New York 12207

Re: Order on Consent
R4-2013-0910-113

Dear Mr. Gilchrist:

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

This will also acknowledge receipt of \$1500 of the civil penalty pursuant to Paragraph I.

Sincerely,

Rich Ostrov
Regional Attorney
Region 4

Enclosure

ec: M. Ellis
P. Evans

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (“ECL”) Article 23 and Title 6
of the Official Compilation
of Codes, Rules and Regulations
of the State of New York (“6 NYCRR”),

**ORDER ON
CONSENT**

File No.
R4-2011-0908-104

- by -

Troy Sand and Gravel Co., Inc.
Respondent

WHEREAS:

Jurisdiction

1. The Department has jurisdiction pursuant to ECL Article 23 to regulate surface mining and reclamation.
2. Respondent, Troy Sand and Gravel Co., Inc. owns and operates the West Sand Lake Quarry, located on Route 42, Sand Lake, New York (Rensselaer County) (“mine”).
3. Respondent is subject to a Mined Land Reclamation Permit (Permit #4-3840-00008//00001) which became effective on April 30, 2012. (“mining permit”).

Blast Violation

4. Special Condition #15 of the mining permit provides that “Air blast shall not exceed the maximum limits listed below at any structure outside the Life of Mine area, Hz high-pass system-133dB.”
5. On August 22, 2013, Respondent conducted a blast (“blast”) at the mine that registered 135.1 dB and 136.5dB at structures outside of the Life of Mine.
6. 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 the conditions of a mining permit.
7. Respondent’s blast exceeded the permit limits in Special condition #15 resulting in a violation of the permit and of ECL 71-1305(2).

Civil Penalty

8. ECL Section 71-1307(1) provides that any person who violates any provision of Article 23 of the ECL or commits any offense described in Section 71-1305 of this title shall be liable to the people of this state for a civil penalty not to exceed five thousand dollars (\$8,000) for each violation.

Waiver of Hearing

9. 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 agree to be bound by the terms, provisions and conditions contained herein.

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

I. In respect to the aforesaid violation, a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) is assessed. Payment of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1500) of the civil penalty is due upon Respondent's return of an executed copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC. ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) of the civil penalty is suspended conditioned on Respondent's compliance with the Order's Schedule of Compliance. The suspended penalty shall be paid to the Department upon receipt by Respondent of a Notice of Violation setting forth the violation of the Order's Schedule of Compliance. The payment of the suspended penalty shall not preclude the Department from asserting an independent action for a violation of the Order's Schedule of Compliance.

II. 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.

III. 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 and its successors (including successors in title) and assigns.

IV. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations identified herein against Respondent and its successors (including successors in title) and assigns.

V. This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party in civil litigation proceedings involving Respondent or any of its affiliated entities.

VI. Except as provided in Paragraph IV of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his/her designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

VII. Respondent shall allow duly authorized representatives of DEC access to the site 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, the ECL and regulations promulgated thereunder, and all permits.

VIII. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IX. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

X. The Schedule of Compliance is incorporated into the Order on Consent and is enforceable there under.

DATED: 10/8, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY: 

Eugene J. Kelly
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.

Troy Sand and Gravel Co., Inc.

SIGNED: _____

TITLE: President

DATE: October 1, 2013

STATE OF New York)
) ss.:
COUNTY OF Albany)

On the 1st day of October in the year 2013, before me, the undersigned,
personally appeared Jude Clemente,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at
c/o Route 43, West Sand Lake, New York 12196
(Full mailing address)

and that he/she/they is (are) the President
(President or other officer or director or attorney in fact duly appointed)

of the Troy Sand & Gravel Co., Inc.,
(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

Andrew W. Gilchrist
Notary Public - The State of New York
No. 4944018
Qualified in Rensselaer County
My Commission Expires: November 14, 2014

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a report evaluating the August 22, 2013 blast. The report shall include any recommendations for preventing a future violations of the permit. The Department approved recommendations shall be considered thereafter a part of the blast plan.