

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 Part 422 of
Title 6 of the Official New York State Code of Rules
and Regulations

-by-

ORDER ON CONSENT
R8-2022-0112-3

Padua Ridge, LLC
3362 Route 409
Watkins Glen, NY 14891,

Respondent.

WHEREAS:

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, Padua Ridge, LLC, is the owner and operator of property located on Route 409, Watkins Glen, Town of Dix, New York, 14891 (Schuyler County), Tax Parcel ID 64.00-3-8.111 ("Property"). The Property is located across the street from the It's Greener Now mine, a part of Tax Parcel ID 64.00-3-8.111, for which the Department issued a Land Mine Reclamation Permit (#80244). No land mine reclamation permit has been issued for the Property.
3. Department staff conducted an inspection of the Property on October 4, 2021 (Inspection) and observed violations of Environmental Conservation Law (ECL) Article 23 and regulations promulgated thereunder at 6 New York Code of Rules and Regulations (NYCRR) Part 421.
4. Both ECL §23-2711 and 6 NYCRR Part 421.1 states that any person who mines more than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months shall not engage in such mining unless a permit for such mining operation has been obtained from the department.
5. Department staff determined that Respondent mined in excess of 750 cubic yards of minerals at the Property within 12 calendar months. DCA
6. Respondent did not have a permit to mine in excess of 750 cubic yards of minerals at the Property within any 12 calendar month period.
7. Respondent's mining in excess of 750 cubic yards of minerals at the Property within a 12 calendar month period without a permit is a violation of ECL §23-2711 and 6 NYCRR Part 421.1.

8. 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"
9. Respondent affirmatively waived its right to notice and hearing in the manner provided by law, and consented to the issuing and entering of this Order and it agrees to be bound by the terms, provisions and conditions contained herein.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.**

- a. With respect to the violation identified in this Order, Respondent is hereby assessed a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000) of which Twenty Thousand Dollars (\$20,000) shall be payable to the New York State Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department. Payment of the remaining Five Thousand Dollars (\$5,000) of the civil penalty is conditioned on Respondent's compliance with the Order, including the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth violations of the Order.

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

- b. **Address to send signed and notarized order on consent.** The Order on Consent, along with any applicable submissions, and a copy of the payment check or proof of the electronic payment, shall be sent to:

New York State
Department of Environmental Conservation
Office of General Counsel – Region 8
6274 East Avon-Lima Road
Avon, New York 14414

- c. **Civil Penalty Payment Methods.** The civil penalty shall be paid by one of the two methods stated below at the time this Order on Consent is placed in the mail or delivered to the New York State Department of Environmental Conservation's Office of General Counsel – Region 8:
 - i. by check sent to the following address, made payable to the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check:

New York State Department of Environmental Conservation
Division of Management and Budget Services

625 Broadway, 10th Floor
Albany, NY 12233-4900

- ii. by electronic payment at <http://www.dec.ny.gov/about/61016.html>. Please have your customer and invoice number available. If you have any questions regarding paying your invoice electronically, please contact the Revenue Fee Unit at 518-402-9343 or revenue@dec.ny.gov.

II. **Effect of Payment of Penalty.** Assessment and payment of any civil penalty imposed under this Order shall not in any way alter Respondent's obligation to satisfactorily perform any action required by this Order or by any approval issued by the Department under this Order.

III. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the Schedule of Compliance. The attached Schedule of Compliance and 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.

IV. **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.

V. **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 accepts 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.

VI. **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.

VII. **Communications.**

A. This paragraph does not apply to payment of the penalty or submission of the Order on Consent, which are instead addressed at Paragraph I, "Civil Penalty", above.

B. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

C. Communications shall be sent to:

For the Department:

Dusty Renee Tinsley
New York State
Department of Environmental Conservation – Region 8
6274 East Avon – Lima Road
Avon, NY 14414

For Respondent:

Martin Wojcik
3362 Route 409
Watkins Glen, NY 14891

VIII. **Standard Provisions.** Respondent must further comply with the Standard Provisions attached to this Order, which constitute material and integral terms and conditions of this Order and are hereby incorporated into this Order by reference.

DATED: 2/24, 2022
Avon, New York

Basil Seggos
Commissioner
New York State Department of Environmental
Conservation

BY:



Timothy P. Walsh, MPA, PE
Regional Director
Region 8

