

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violations of Article 23 and 71
of the Environmental Conservation Law by,

**CONSENT
ORDER**

**IT'S GREENER NOW, INC. and
MARTIN WOJCIK**

**CASE NO.
R8-20110127-5**

Respondents.
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WHEREAS:

1. The Department of Environmental Conservation (the "Department") is a department of the state of New York ("state") with jurisdiction over the environmental policy and programs of the state pursuant to the New York State Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR" or the "regulations").

2. The Department is charged with the responsibility and authority to regulate the mining industry in the state pursuant to ECL Article 23.

3. **IT'S GREENER NOW, INC.** ("IGN") and **MARTIN WOJCIK** ("Wojcik") have been engaged in mining, as that term is defined in ECL Article 23, at a location on NYS Route 409 in the town of Dix, Schuyler County, New York (the "site"). The site is commonly known as the Padua Ridge Gravel Mine.

4. Wojcik is an individual in a position to influence corporate policies and the acts and/or omissions hereinafter stated, and who was and is responsible for the acts

and/or omissions hereinafter stated. [Collectively, IGN and Wojcik are hereinafter denominated the "Respondents".]

5. On or about November 19, 2004, the Department issued IGN a permit to engage in mining activity at the site (the "permit").

6. The permit identified a life of mine area (the "approved life of mine area") where mining was authorized during the duration of the permit, consistent with the mined land use plan submitted by Respondents as part of their application for the permit.

7. The permit also imposed various general and special conditions applicable to the manner in which mining was to be conducted at the site.

8. The permit expired on November 16, 2009 and was not modified by the Department prior to its expiration.

9. Respondents' authority to conduct mining at the site ceased when the permit expired on November 16, 2009,

10. IGN has applied to renew the permit and the application remains pending before the Department (the "permit renewal application").

11. On or about December 21, 2010, representatives of the Department inspected the site to determine compliance with the permit (the "inspection").

12. Based on observations made during the inspection and further investigation, the Department determined that Respondents had affected approximately 3.72 acres outside the approved life of mine area at the site (the "illegally affected area"). The illegally affected area is depicted on the map which is attached as Exhibit A. It is outlined in blue and denominated "Additional Areas of Disturbance; October 13,

2010.”

13. The illegally affected area is not reclaimed.

14. By affecting areas outside the approved life of mine area, Respondents violated general condition no. 12 of the permit.

15. Pursuant to ECL § 71-1305(2), it is unlawful to violate the provisions of any permit issued by the Department under ECL Article 23.

16. Respondents' conduct is subject to the penalty provisions of ECL §71-1307(1).

17. Representatives of Respondents and the Department have conferred and have agreed to execute this consent order in settlement of Respondents' civil liability for the violations described herein.

18. Respondents affirmatively waive the right to a hearing in this matter, consent to the issuance of this order, and agree to be bound by the provisions, terms and conditions of this order.

NOW, being duly advised and having considered the matter, IT IS ORDERED THAT:

I. Compliance Directives.

A. Respondents shall immediately cease and desist from conducting mining activity in the illegally affected area, except for reclamation activity approved by the Department under this order.

B. Respondents shall reclaim the illegally affected area forthwith according to the terms and conditions stated in this order.

II. Reclamation of the Illegally Affected Area.

A. Within thirty (30) days of the effective date of this order, Respondents shall submit a reclamation plan for the illegally affected area to the Department for its review and approval.

B. The reclamation plan shall contain the details stated in attached Schedule A and such other and further information as the Department in its discretion may require as part of its approval of the reclamation plan.

C. Respondents are prohibited from affecting additional acreage outside the illegally disturbed area to obtain material for reclamation required under this order. Respondents are further prohibited from using material from the approved life of mine area under the permit that expired on November 16, 2009 until the permit is renewed by the Department.

D. Respondents shall complete the approved reclamation according to the terms, conditions and schedules stated by the Department.

E. Respondents shall notify the Department in writing when reclamation is complete.

F. Respondents shall not be released from their obligation to reclaim the illegally affected area until the Department approves the reclamation.

G. The Department may withhold approval of the reclamation until Respondents' establish acceptable vegetative cover in the illegally affected area in accordance with the requirements of 6 NYCRR § 422.3(d)(2)(vi)(d).

H. The obligation to reclaim the illegally affected area shall not be impacted by the Department's decision on the permit renewal application. Reclamation of the

illegally affected area under this order is independent of the obligation of Respondents to reclaim the approved life of mine area established under the permit or any renewal or modification of the permit.

III. Civil Penalty. Respondents are hereby assessed a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) for the violations stated herein, which shall be paid to the Department as follows:

A. Payable Penalty: Five Thousand Dollars (\$5,000) shall be paid when Respondents sign this order and return it to the Department; and

B. Suspended Penalty: The balance of the penalty in the sum of Ten Thousand Dollars (\$10,000) shall be suspended, and shall not be payable, provided that Respondents fully comply with the requirements of this order in a timely fashion. In the event that the Respondents fail to fully comply with the requirements of this order in a timely fashion, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondents without prejudicing the Department from seeking further appropriate penalties for violations of this order by Respondents.

IV. Joint and Several Liability. Respondents are jointly and severally liable for performing the compliance, reclamation and remedial and requirements of this order. Respondents are jointly and severally liable for payment of the civil penalty assessed by this order.

V. Standard Provisions. Respondents shall further comply with the standard provisions recited on the attached blue cover, which constitute material and

integral terms and conditions of this consent order and are hereby incorporated into this consent order by reference.

DATED: *August 8, 2011*
Avon, New York

JOSEPH MARTENS, COMMISSIONER
New York State Department of
Environmental Conservation

By:

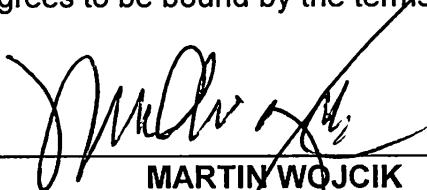


PAUL J. D'AMATO
Regional Director

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance of the foregoing order, waives his right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

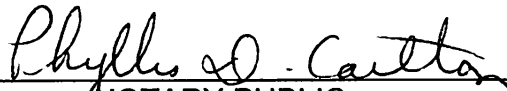
Date: 8/1/11



MARTIN WOJCIK

STATE OF New York)
COUNTY OF Schuyler) SS.:

On this 1 day of Aug, 20 11, before me personally came
Martin Wojcik to me known to be the
individual described in, and who executed the foregoing instrument, and
acknowledged that he executed the same.



NOTARY PUBLIC

PHYLLIS D. CARLTON
Notary Public, State of New York
Qualified in Schuyler County
No. 4933166
Commission Expires 7/25/14

SCHEDULE A
CASE NO. R8-20110127-5
IT'S GREENER NOW, INC. and MARTIN WOJCIK

RECALAMTION PLAN DETAILS

The reclamation plan must include both a narrative portion and graphical portion.

Required Narrative Information:

1. Grading and slope treatment: Describe how affected acreage will be graded and contoured to blend in with the surrounding landscape. Explain how the final contours will become compatible with future land-use and provide a stable environment for erosion control and re-vegetation. Indicate what the final side slopes will be. Be aware that the maximum proportional slope (Horiz. To Vert. Ratio) for coarse sand and gravel is 1.5/1 slope.
2. Disposal of materials: Indicate if refuse, spoil, unused minerals and solid waste is present in the affected area. If it exists, explain how it will be properly removed and disposed of.
3. Topsoil Grading: Indicate the minimum amount of topsoil cover (in inches) that must be spread and properly graded to cover all affected acreage. Describe how topsoil grading will be accomplished and what type of equipment will be utilized.
4. Seeding & Re-vegetation: Seed application details must be provided. Indicate the seed mix type, how much seed per acre will be applied, and if application of soil amendments such as lime, fertilizer and mulch will be needed.
5. Final Drainage: Indicate what the final drainage pattern will be for this area. Explain how storm water run-off will be contained and erosion controlled.
6. Schedule: Include a proposed schedule for completion of the work necessary to reclaim the illegally affected area by September 30, 2011, except for the successful establishment of vegetation.

Required Graphical Information:

1. Grading Plan: The map must illustrate the final land use topography. This must be represented on the map as contours. Cross sections must also be provided showing the final side slope angles.

each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this order, any reports, submissions, and notices herein required shall be made to the Regional Director of the Region 8 office of the Department, located at 6274 East Avon-Lima Road, Avon, New York 14414.

Access. For the purpose of monitoring or determining compliance with this order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if Respondent cannot comply with any requirements of the provisions hereof because of an act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondent was not foreseen or a proximate cause, provided, however, that the Respondent shall immediately notify the Department in writing, when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof; Respondent will adopt all reasonable measures to prevent or minimize any delay.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives, employees, agents and contractors harmless for all claims, suits, actions, damages and costs of every nature and description arising out of resulting from the fulfillment or attempted fulfillment of this order by the Respondent, its employees, servants, agents, successors (including successors in title) and assigns.

Modifications. No change in this order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this order shall be construed as barring, diminishing, adjudicating or in any way affecting any right of the Department to directly perform, to engage others to perform on its behalf, or to direct others including Respondent to perform, any additional measures that are authorized by law to protect human health, safety or the environment, including the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this order, service of a duly executed copy of this order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

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

New York State Department of Environmental Conservation

Administrative Consent Order

Region 8 Office
6274 East Avon-Lima Road
Avon, New York 14414
585-226-2466

Please refer to the Standard Provisions contained on the inside of this cover for additional terms and conditions of the Consent Order herein contained.