

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

FILE

Office of General Counsel, Region 8
6274 East Avon-Lima Road, Avon, NY 14414-9516
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May 19, 2023

Martin Wojcik
3362 Route 409
Watkins Glen, New York 14891

Dear Mr. Wojcik:

RE: Consent Order No. R8-2022-1229-85

Enclosed is a fully executed copy of the Order on Consent for the above-referenced case which has been signed by Regional Director, Tim Walsh.

Sincerely,



Dusty R. Tinsley
Assistant Regional Attorney

Enclosure

ec: Dan Sek, NYSDEC - Avon

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
R8-2022-1229-85

It's Greener Now, Inc.
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.

RESPONDENT

2. Respondent, It's Greener Now, Inc. is the owner and operator of the It's Greener Now mine, on Tax Parcel ID 64.00-3-8.111, located at 3362 Route 409, Watkins Glen, New York 14891 ("Mine"). The Department issued a Land Mine Reclamation Permit (#80244) ("Permit") for the Mine.

INSPECTION

3. Department staff conducted an inspection of the Property on October 3, 2022 (Inspection) and observed violations of ECL Article 23 and 6 NYCRR Part 421.

FIRST VIOLATION

4. ECL 71-1305(2) states 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."
5. ECL 23-2713(1) states that "All mining and reclamation activities on the affected land shall be conducted in accordance with an approved mined land-use plan."
6. 6 NYCRR Part 422.1(a) states that "After 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."
7. The Permit states at Mined Land Reclamation Permit Condition 1 that "All activities authorized by this permit must be in strict conformance with the approved plans

submitted by the applicant or applicant's agent as part of the permit application. Such plans were approved by Jackie M. Scaccia, Mineral Resources on October 25, 2017 and consist of the following . . . Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 [and] Mining Plan Map dated June 7, 2017"

8. The Permit states at Mined Land Reclamation Permit Condition 2 that "The permittee shall not deviate or depart from the approved mined land use plan without approval by the Department of an alteration or modification thereto."
9. The Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 and Mining Plan Map dated June 7, 2017 identify the approved Permit Term Area and the Life of Mine.
10. There was no Department approved alteration or modification to the approved Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 or Mining Plan Map dated June 7, 2017.
11. The Permit states Mined Land Reclamation Permit Condition 3 that "The permittee shall locate all overburden stockpiles within the permitted area of the approved Life of Mine."
12. During the October 3, 2022 inspection, Department staff determined that Respondent excavated 1.6 acres outside the approved Permit Term Area and Life of Mine set forth in the Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 and Mining Plan Map dated June 7, 2017.
13. During the October 3, 2022 inspection, Department staff determined that Respondent stockpiled materials on .5 acres outside the approved Life of Mine set forth in the Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 and Mining Plan Map dated June 7, 2017.
14. Respondent's actions in excavating and stockpiling materials outside the approved Permit Term Area and Life of Mine are contrary to the Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 and Mining Plan Map dated June 7, 2017.
15. Respondent's actions in excavating and stockpiling materials outside the approved Permit Term Area and Life of Mine contrary to the Mined Land Reclamation Permit Renewal/Mining Plan dated November 2003 and Mining Plan Map dated June 7, 2017 constitute violations of ECL 23-2713(1) and 71-1305(2), 6 NYCRR Part 422.1(a), and the Permit.

SECOND VIOLATION

16. The Permit states at Mined Land Reclamation Permit Condition 9 that "The permittee shall provide permanent markers such as stakes, posts or other devices acceptable to the Department to identify and delineate the permit area, as outlined on the approved Mining Plan Map. These markers are to be installed prior to the start of mining and shall be maintained for the duration of the permit term."

17. Department staff determined that the permanent markers at the Mine do not delineate the permit area, as outlined on the approved Mining Plan Map.
18. Respondent's failure to provide permanent markers to identify and delineate the permit area, as outlined on the approved Mining Plan Map, is a violation of the Permit.

CIVIL PENALTY

19. 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"
20. Respondent affirmatively waived its right to notice and hearing in the manner provided by law, consented to the issuing and entering of this Order, and 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 violations identified in this Order, Respondent is hereby assessed a civil penalty in the amount of Twenty Five Thousand Dollars (\$25,000) of which Fifteen Thousand Dollars (\$15,000) shall be payable to the New York State Department of Environmental Conservation in installment payments as follows:

First Installment – \$5,000 due at the time the signed and notarized Order is submitted to the Department;

Second Installment - \$5000 due 30 days from the effective date of the Order;

Third Installment - \$5000 due 60 days from the effective date of the Order;
and

The remaining \$10,000 penalty amount is suspended conditioned on Respondent's compliance with the Order. Respondent must submit the suspended penalty to the Department within 30 days from the date of a notice of violation 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. Payment of the suspended shall not limit the Department's ability to seek further civil penalties or commence any other actions for violations of the Order.

- b. **Tax Information and Statewide Offset Program Notice.** Respondent agrees to the terms contained in Exhibit A in consideration of paying the

civil penalty in installments. Exhibit A is incorporated into this Order on Consent and is enforceable thereunder.

Respondent shall return to the Department, with the signed and notarized Order on Consent, a completed Exhibit A, the Tax Information and Statewide Offset Program Notice.

- c. **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

- d. **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: 05/09, 2023
Avon, New York

Basil Seggos
Commissioner
New York State Department of Environmental
Conservation

BY:



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

CONSENT BY RESPONDENT

R8-2022-1229-85

Respondent, **It's Greener Now, Inc.** hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

It's Greener Now, Inc.

By [Signature]:

[Handwritten Signature]

Name [Print]:

Martin Wojcik

Title:

Owner

Date:

4/14/23

Email:

office@ignsandandgravel.com

Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF Schuyler

On the 14th day of April, in the year 2023, before me, the undersigned, personally appeared Martin Wojcik, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Handwritten Signature]

Notary Public

If you are unable to secure notarization, you must sign the statement below.

In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Signature

Printed name

Jennifer L White
Notary Public #01WH6100920
State of New York, Co. of Steuben
My Commission Expires Nov. 3, 2023

RECEIVED APR 17 2023



Schedule of Compliance

1. If the Department does not include the 2.1 acre area affected outside the Life of Mine (affected acreage) as requested in Respondent's Permit Modification Application, within 30 days from the Department's notice issuing the Modified Permit, Respondent must submit to the Department, for review and approval, a reclamation plan (written and graphic) detailing the plans for reclamation of the 2.1 acre area affected outside the Life of Mine (affected acreage). The reclamation plan must include, but is not limited to:
 - a. the following activities
 - i. Grading and Sloping –
 - ai. Detail how the affected acreage will be graded and contoured/sloped to blend in with the surrounding landscape.
 - aii. Explain how the final contours/slopes will become compatible with future land-use and provide a stable environment for erosion control and re-vegetation.
 - aiii. Describe how topsoil/overburden grading will be accomplished, including the equipment to be used.
 - aiv. State what the final slopes will be at the time of final reclamation. Note that maximum proportional slopes for sand and gravel is 1 on 1.5 (vertical to horizontal ratio).
 - av. State the minimum amount of topsoil cover (in inches) that will be spread and graded to cover all affected acreage.
 - ii. Disposal of materials – State whether refuse, spoil, unused materials, and solid waste is present in the affected acreage, identifying any that is present by type and location. If present, detail how these materials will be removed from the affected acreage and how it will be disposed of.
 - iii. Seeding and re-vegetation – State how much seed per acre will be applied and if application of the soil amendments such as lime, fertilizer, and mulch, will be needed. Provide application rates for the needed soil amendments.
 - iv. Final Drainage – Detail what the final drainage pattern will be for the affected acreage. Detail how storm water run-off from the restored affected acreage will be contained. Detail how erosion from the restored affected acreage will be controlled.
 - v. Disturbance of additional acreage – It is important to note that as reclamation progresses, disturbance of any additional acreage outside the Life of Mine is prohibited. Virgin, in-situ materials located in the adjacent areas must remain unaffected by the surrounding restoration work.
 - b. the following graphical information:

- i. a map that outlines the affected acreage,
 - ii. a grading plan/reclamation map:
 1. showing the final land use topography represented in contours; and
 2. including a cross-section (N-S and E-W) showing the final side slope angles and floor grading.
 - c. Reclamation schedule – Include a schedule for the activities associated with restoration of the affected acreage with a restoration completion date of July 1, 2023, including, but not limited to, (a)(i-vi) above, full vegetation of the reclaimed area, the importation of 7,280 cubic yards of topsoil to be stockpiled within the Life of Mine, and stabilization of the stockpile by vegetation.
2. Within 60 days from the effective date of this Order, Respondent must submit to the Department an increased financial security in the amount of \$176,750 in a format acceptable to the Department (surety bond, letter of credit, or certificate of deposit).

Standard Provisions

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.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its heirs, its employees, servants, agents, successors and assigns, and all persons, firms, and corporations acting subordinate thereto.

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.

Default of Payment. The penalty assessed in the Order on Consent constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order on Consent, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset by the penalty amount any tax refund or other monies that may be owed to you by the State of New York. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

Effective Period of this Order and Termination. This Order shall take effect when it is signed by the Commissioner of the Department or the Commissioner's designee and shall expire when all the requirements imposed by the Order are completed to the Department's satisfaction.

Entirety of Order. The provisions of this Order constitute the complete and entire Order issued to the Respondent, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the "Modifications" provision. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondent shall be construed as relieving the Respondent of his/her obligations to obtain such formal approvals as may be required by this Order.

Failure, Default, and Violation of Order. The failure of Respondent to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL. In addition, Respondent's failure to comply fully and in timely fashion with any provision, term, or condition 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 the Respondent by the Department.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order on Consent, because of natural disaster, federal or state declared national or state emergency based on an epidemic or pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondent shall include in such application the measures taken by Respondent to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order on Consent pursuant to this subparagraph.

Indemnification. 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 or 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 to 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.

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.

Not a Permit or Permit Modification. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

Reservation of Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any right of the Department to seek natural resource damages from Respondent or others; or 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.

Scope of Settlement and Violations Addressed. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge or which occur after the effective date of this Order.

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 or email shall be deemed good and sufficient service.