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ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

SUBJECT: MINED LAND RECLAMATION
RULES AND REGULATIONS

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JACK STERNBACH, Deputy Chief Engineer (Construction Subdivision)

The purpose of this Instruction is to clarify the responsibility of our Regional Construction Supervisors and Engineers-in-Charge in the administration of contract operations in conformance with the Mined Land Reclamation Law.

We have developed a mutually satisfactory working relationship with the Department of Environmental Conservation, which is charged with the administration of this Law, and have been able to eliminate potential costly and time-consuming procedures for our contractors which would have otherwise become necessary.

This arrangement depends on our vigorous enforcement of our Standard Specifications relative to the restoration of disturbed areas, cooperation with EnCon field representatives, and the monitoring of required mining permits, as delineated in the attached memorandum of understanding. Also attached is an abstract of the important aspects of EnCon's Rules and Regulations prepared by D.O.T.'s Environmental Analysis Section for your information.

Engineers-in-Charge should advise their contractors that, although the procedure for obtaining a mining permit has been simplified for D.O.T. contract-related borrow pits, conformance with Uniform Procedures (UPA) and State Environmental Quality Review (SEQR) requirements generally results in a two to four week review period prior to issuance of a permit. No work should be allowed to start without the prescribed permit.

Attachments

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND THE NEW YORK
STATE DEPARTMENT OF TRANSPORTATION

IMPLEMENTATION OF MINED LAND RECLAMATION LAW RULES AND
REGULATIONS RELATING TO MINING OPERATIONS SUBJECT TO
DEPARTMENT OF TRANSPORTATION CONTRACT SPECIFICATIONS

This Agreement is entered into the 12th day of May
1977, between the New York State Department of Environmental Conservation
and the New York State Department of Transportation

WHEREFORE, 6 NYCRR Part 422.1 (e) provides as follows:

"(e) An applicant proposing to conduct a mining operation in conjunction with a department of transportation contract, in accordance with the requirements of said agency's contract documents and specifications, may submit a copy of the contract agreement to the department in lieu of a mined land-use plan. If a mining permit is issued, the contract documents and specifications shall satisfy the requirements of this part and shall be enforceable as such. The department will monitor the mining operation in cooperation with the engineer-in-charge to insure conformance with the title and these rules and regulations."; and

WHEREFORE, the Departments of Environmental Conservation and Transportation mutually recognize the need to cooperate in both the enforcement of Department of Transportation contract specifications relating to the restoration of disturbed areas outside of the right-of-way where contract documents and specifications have been accepted by the Department of Environmental Conservation in satisfaction of the requirements of Part 422, and the determination of the necessity for, and implementation of, any

more stringent standard set forth in Part 422 of the Mined Land Reclamation Rules and Regulations deemed necessary by both Departments.

NOW THEREFORE, the New York State Department of Environmental Conservation and the New York State Department of Transportation do agree as follows:

1. The engineer-in-charge employed by the Department of Transportation on any project shall insure that the contractor has obtained a mining permit from the Department of Environmental Conservation before work is authorized on any proposed borrow source, gravel source, or the like, subject to the engineer-in-charge's approval and control from which more than 1,000 tons of material is to be removed within any twelve successive calendar months.
2. The restoration of borrow source, gravel source, or the like, for which the Department of Transportation's contract documents and specifications have been accepted by the Department of Environmental Conservation in satisfaction of Part 422, shall be accomplished in accordance with the contract specifications of the Department of Transportation relating to the restoration of disturbed areas outside of the right-of-way. However, should the engineer-in-charge and the appropriate representative of the Department of Environmental Conservation mutually decide that a more stringent standard for the operation of a mine or reclamation as contained in the Mined Land Reclamation Rules and Regulations is necessary for a particular borrow source, gravel source, or the like, the engineer-in-charge shall order the contractor to comply with such standard.

3. A waiver of revegetation may be considered if other use of the borrow source, gravel source, or the like, is planned within six months. However, in no instance shall the revegetation requirements of the Department of Transportation's specifications be waived by the engineer-in-charge without the written consent of both the affected property owner and the appropriate representative of the Department of Environmental Conservation.

4. The submission of a grading plan by the contractor for a mining operation to be carried out in conjunction with a Department of Transportation contract where the contract documents and specifications have been accepted by the Department of Environmental Conservation in satisfaction of the requirements of Part 422 may be deemed desirable where quantities of borrow, gravel, or the like, will be removed such that genuine concerns with the future aesthetics or stability of the remaining terrain are raised. Such submission shall be required by the engineer-in-charge before approval of any such borrow source, gravel source, or the like, is granted when the engineer-in-charge and the appropriate representative of the Department of Environmental Conservation mutually agree as to the necessity of such grading plan.

5. Should it come to the attention of the engineer-in-charge or any other official of the Department of Transportation that construction materials to be used or being used on a Department of Transportation project will be obtained or are being obtained from a mine which is subject to the permit requirements specified in the Mined Land Reclamation Law Rules and Regulations and for which no permit has been obtained, the engineer-in-charge or such other Department of Transportation official shall

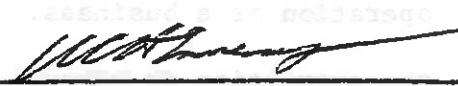
immediately notify the appropriate official of the Department of Environmental Conservation at the Regional Office which has jurisdiction over such mining operation.

6. In the case of disputes between the engineer-in-charge and the appropriate representative of the Department of Environmental Conservation regarding any of the foregoing provisions or other matters relating to the administration of the Mined Land Reclamation Law, the engineer-in-charge shall defer action with respect to the disputed issue until such dispute is settled as follows: The disputed matter shall be referred for resolution to the appropriate Regional Directors of both Departments. In the event that the matter cannot be resolved by the Regional Directors the dispute shall be referred to the First Deputy Commissioner of the Department of Environmental Conservation and the Executive Deputy Commissioner of the Department of Transportation for resolution.

7. This agreement may be terminated by either Department upon 30 days' written notice.



COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION

WILLIAM C. HENNESSY
EXECUTIVE DEPUTY COMMISSIONER
OF TRANSPORTATION

IPDG-23
MINED LAND RECLAMATION

The following highlights a few of the most important aspects of the regulations as they affect DOT activities:

APPLICABILITY (See Part 420.2 b)

A permit from the Department of Environmental Conservation is required for any mining of minerals from all mines from which 1000 tons or more of minerals are to be removed from the earth within 12 successive calendar months.

Excavation or grading, when conducted solely in aid of on-site construction is not considered "mining", however excavation and removal of 1000 tons or more of minerals within any 12 successive months incidental to (outside the right of way*) construction is considered "mining" and a permit would be required.

DEFINITIONS (See Part 420.1)

Three important definitions are provided for the terms "mine", "mining" and "mineral".

Mine means: any pits or underground workings from which any mineral is produced for sale, exchange, commercial, industrial or municipal use and all shafts, slopes, drifts, or inclines leading thereto, and includes all equipment above, on or below the surface of the ground used in connection with such pits or workings.

Mineral means: aggregate, cement rock, clay, curbing, dimension stone, dolostone, emery, flagstone, garnet, gem stones, gravel, gypsum, iron, lead, limestone, marble, marl, metallic ore, paving blocks, peat, riprap, roadstone, salt, sand, sandstone, shale, silver, slate, stone, talc, titanium, trap rock, wollastonite, zinc or any other solid material or substance of commercial value found in or on the earth. Overburden shall be considered a mineral whenever it is removed from the affected land for sale, exchange or use in the regular operation of a business.

Mining means: the extraction or removal of minerals from the ground or the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation or processing of minerals at the mine location so as to make them suitable for sale, exchange, commercial, industrial or municipal use; but shall not include excavation or grading when conducted solely in aid of on-site farming or construction. Excavation and removal of 1,000 tons or more of minerals incidental to farm improvements or construction projects shall not be considered to be

*Right of way includes abutting areas if temporarily acquired via permanent or temporary easement.

excavation or grading conducted solely in aid of on-site farming or construction, if such minerals are removed for the purpose of sale, exchange, commercial, industrial or municipal use. Extraction and removal of overburden and minerals shall not be considered to be mining when done only for the purpose of extracting samples or specimens for scientific purposes, or only for the purpose and to the extent necessary to determine the location, quantity or quality of any mineral deposit so long as no minerals removed during exploratory excavation are sold, processed for sale or consumed in the regular operation of a business.

DOT CONSTRUCTION PROJECTS (Part 422.1 e)

The most important aspect of these regulations relative to DOT construction projects is that the department's contractors will be the applicants to DEC for any necessary mining permits. Contractors are able to obtain their permits from DEC by complying with Section 422.1 e which states: "An applicant proposing to conduct a mining operation in conjunction with a Department of Transportation contract, in accordance with the requirements of said agency's contract documents and specifications may submit a copy of the contract agreement to the department (DEC) in lieu of a mined land-use plan. If a mining permit is issued, the contract documents and specifications shall satisfy the requirements of this Part (Part 422 which requires a land use plan from an applicant) and shall be enforceable as such. The department (DEC) will monitor the mining operation in cooperation with the engineer-in-charge to insure conformance with these rules and regulations."

The attached Memorandum of Understanding agreed to by the Department's of Environmental Conservation and Transportation on May 12, 1977 is for your information and use. This MU details DOT's responsibilities on construction projects where more than 1,000 tons of material is to-be removed from any off-site borrow source, gravel source or the like within any twelve successive calendar months.

The engineer in charge is the department representative with primary responsibility for ensuring that contractors comply with the regulations and the DEC-DOT MU. (Refer to Subsection 107-10 of the DOT Standard Specifications) With reference to paragraph 2 of the MU if a more stringent standard is to be agreed upon by the EIC and DEC and if compliance by the contractor will involve significant increase in work, the EIC should check with his supervisor prior to agreeing to the standard with DEC.

BORROW SOURCES FOR MAINTENANCE ACTIVITIES

Highway and canal maintenance activities involving state owned or leased sources of minerals will require a permit from DEC if 1,000 tons or more of minerals are to be removed within 12 successive months. Compliance with this regulation would therefore be required.

PRIVATELY OWNED AND OPERATED MINES

If the minerals are from a private commercial source or supplier the owner must obtain his own permit from DEC.

COMPLIANCE WITH STATE ENVIRONMENTAL QUALITY REVIEW LAW (Part 420.4)

Applications to DEC for a mining permit are to include all information required of an applicant pursuant to DEC's SEQR regulations. Since DEC is the lead agency for SEQR purposes in the mining permit process, DEC's regulations (6 NYCRR Parts 617 and 618) apply. An environmental impact statement may be required. Copies of Parts 617 and 618 are available from the DEC region offices. A limited supply is also available from the DOT Environmental Analysis Section.

UNIFORM PROCEDURES

For those sites requiring a permit from DEC, the Uniform Procedures regulations (6 NYCRR Part 621) are applicable and supersede those portions of the Mined Land Reclamation regulations dealing with time periods for DEC action and permit processing procedures. Information on Uniform Procedures was distributed to department staff via a November 30, 1977 memorandum to all Assistant Commissioners and Regional Directors.

ADDITIONAL INFORMATION

The following department staff may be of assistance to you if you have any questions on these regulations or their implementation:

- J. Sternbach - Construction Subdivision, 457-6472
- W. Hofmann - Technical Services Subdivision, 457-4445
- W. Mac Tiernan - Legal Affairs Office, 457-2411
- K. Q. Smith, Environmental Analysis Section, 457-5672