



December 14, 2011

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Town of New Haven  
P.O. Box 141  
New Haven, New York 13121

Attn: Russell Sturtz, Supervisor

Re: W.D. Malone Excavating & Trucking, Inc.  
Wallis Sand and Gravel Pit  
Johnson and Hanson Roads  
Town of New Haven, Oswego County, New York

Dear Mr. Sturtz:

This office has been recently retained as consultants by the Applicant, W.D. Malone Excavating & Trucking, Inc., on the above-referenced proposed sand and gravel mine located at the intersection of Johnson and Hanson Roads in the Town of New Haven, Oswego County, New York. It is our understanding that an application for a Mined Land Use Permit was previously submitted on behalf of the Applicant. We are in receipt of Town comments dated October 19, 2010 regarding the previous submittal.

NYSDEC has been declared Lead Agency under the State Environmental Quality Review Act, as they are the issuing body of Mined Land Use Permits, while the Town of New Haven is an Involved Agency. In support of the Applicant's Mined Land Use Permit Application, we have prepared a comprehensive application package including: a Mining Plan, Reclamation Plan, and Cross Sections, all revised in response to comments from the New York State Department of Environmental Conservation (NYSDEC) dated March 31, 2011, and a subsequent meeting with a NYSDEC representative. We have also prepared a Noise Assessment Report, Hydrogeologic Report, and narrative Mined Land Use Plan. All current plans and reports, as submitted to NYSDEC, have been included in this submission. Many of the Town's comments are addressed within the text of these reports and on the revised plans.

According to NYS Environmental Conservation Law, Article 23 Mineral Resources, Title 27 Mined Land Reclamation Law (MLRL), local governments can make a determination and notify the Department and Applicant ONLY in regard to:

1. Setbacks from property boundaries and public thoroughfares and rights-of-way;
2. Manmade or natural barriers designed to restrict access if needed, and if affirmative, the type, length, height, and location thereof;
3. Dust control;
4. Hours of operation;
5. Whether mining is prohibited at that location.



## **1. SETBACKS**

A minimum 50' excavation setback from Johnson Road and 130' setback from Hanson Road has been provided, as evidenced on the attached Mining Plan. Additionally, a 25' setback from the nearest property line to the Life of Mine limits and a 100' setback from the NYSDEC wetlands on-site have been provided. The closest distance from the LOM limits to Butterfly Creek is more than 250'. These setbacks have provided a reasonable buffer between the LOM limits to public thoroughfares, neighboring properties, and wetlands and streams. The total area of the LOM boundary is 36 +/- acres, or approximately half of the property owned by the Applicant at this site. The proposed Mining Plan complies with all NYSDEC setback requirements.

If, as the Town suggested in their comment letter, 200' setbacks were to be provided to residential property lines, cemetery property lines, and road edge, as well as 100' setbacks to wetlands, the remaining LOM area would be only 24 +/- acres, or 38% percent of the applicant-owned property (rendering 62% of the subject property unusable). The Applicant therefore objects to the Town-proposed setbacks, as there are no Town statutes to support the proposed setback limits, and they would constitute a limitation on the reasonable return of the applicant's property. In cases where the local municipality does not have mining-specific setback requirements, the setbacks outlined in the NYSDEC legislation prevail. The Town proposed setbacks are both unnecessary and arbitrary, and could represent a taking of private property if imposed.

## **2. BARRIERS**

The Applicant has agreed to construct a gate across the entrance road to the mine from Johnson Road. This gate shall be kept locked at all times when the mine is not operating in order to prevent dumping, noise, and damage to areas reclaimed or undergoing reclamation.

Topsoil screening berms shall be constructed at the limits of each active phase to limit noise impacts, visual impacts, and unpermitted access. A typical cross section of the topsoil berms is shown on the attached "Cross Sections" plan, and indicates the berms shall be constructed with a 10' average top width, a 10' to 20' height, and side slopes no steeper than 1 vertical to 2 horizontal. The proposed topsoil berms shall be seeded and mulched as soon as practicable after berm grading is complete.

The mining schedule for each phase shall be:

- Clear vegetation limited only to the area necessary for the upcoming mining season, and haul roads.
- Strip topsoil within the area necessary for one season of mining in order to help provide for visual screening of the active mine area and to limit the acreage exposed to wind and water erosion.
- Construct topsoil berms near the perimeter of the active phase, then stabilize with seed and mulch
- Begin sand and gravel extraction

All residences within 500 feet of the proposed mine limits have been shown on the Mining Plan. The nearest residence is located on Hanson Road approximately 160 feet to the south of the proposed site. The nearest residence to the west of the proposed site (on Johnson Road) is approximately 210 feet from the LOM boundary. The screening berms are presented on the attached "Cross Sections"



plan, and confirm that sufficient visual attenuation shall be provided for the residences along Johnson and Hanson Roads.

It should be noted that the site is under the private ownership of W.D. Malone Trucking & Excavating, Inc., and access is not currently permitted to anyone not escorted by or employed by WDM. The anecdotal discussions detailed in the public comment letters of neighbors utilizing the property for various reasons indicate trespassing on private property. The Applicant has agreed to place "Posted" signs surrounding the property boundary, though enclosing the entire 63.3 acre property with a fence is both impractical and unnecessary.

### **3. DUST CONTROL**

The Applicant will be required by NYSDEC to be in compliance with the following:

All dust sources (specific and non-specific) such as haulageways, excavation, handling and stockpiles shall be controlled by watering and/or Department approved dust palliatives (suppressants) as needed; depending on weather and operating conditions. Additional dust reduction measures shall include immediate stabilization of stockpiles and berms by seeding and mulching, as well as reduced truck speed on haulageways.

A minimum of 6 inches of crushed stone will be applied to all haul road areas where there is evidence of dust, water erosion and/or unsafe conditions. Any and all areas where topsoil, subsoil, clay, silt, erodible materials, and/or overburden are exposed to wind erosion causing dust will be seeded with a soil conservation seeding mixture and mulched within 15 days.

Dust generated by mining activities and haul road use shall be controlled by water spray or by paving. Water shall be applied as often as needed to effectively prevent dust. All paved surfaces shall be swept as often as necessary to effectively prevent dust.

### **4. HOURS OF OPERATION**

All mining and mining related operations, including but not limited to excavating, mining, grading, processing, screening, sorting, loading, stockpiling operations, haulage operations, haul road improvements/construction, reclamation operations, maintenance operations, and so on, will be limited to the following hours and days: No mining and mining related operations, as outlined above, shall take place before 6 AM and no mining operations shall take place after 6 PM Monday through Saturday. There will be no mining or mining related activities taking place on Sundays, New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, and Christmas. In addition, there will be no operating of motorized equipment and no idling of any trucks parked inside or outside this mine (adjacent to this mine waiting for the mine to open), before 6AM and after 6PM Monday through Saturday. If any trucks arrive early (before 6AM), the driver(s) shall be advised to immediately turn their engines off. No trucks shall be allowed to enter this mine before 6AM and after 6PM.



## 5. LOCAL MINING ORDINANCES

According to Article 5, Section 5.97(Mining) of the amendment to the Local Law #2 of 2001 known as the "Site Plan Regulations of the Town of New Haven",

- A. All mining activities are required to submit a reclamation plan.
- B. The Town of New Haven shall be listed as an involved agency in the SEQR process.
- C. Reclamation should begin as each phase of the project is completed, and end before the next phase of the project is twenty-five percent (25%) completed, in accordance with the NYS Department of Environmental Conservation's permit requirements, where applicable.
- D. Prior to beginning excavation, the developer is required to post a bond, the amount to be determined by the Planning Board, to cover the wear and tear on local and county roads.

It is our understanding that mining is NOT prohibited in this location per any Town Zoning Ordinance. A Reclamation Plan is attached to this letter. The Town of New Haven has been designated as an Involved Agency in the SEQR process. Reclamation shall begin as each phase of the project is completed, and end before the next phase of the project is 25% completed, as dictated in the Mined Land Use Plan. The developer shall post a bond to cover the wear and tear on local and county roads prior to beginning excavation.

The remaining issues addressed in your October 19, 2010 comment letter have been or will be reviewed by the NYSDEC during their permit process for the Mined Land Use Permit. NYS Environmental Conservation Law, Article 23 Mineral Resources, Title 27 Mined Land Reclamation Law (MLRL) has affirmed that only the State can regulate mining operations under the MLRL. Therefore, we assert that DEC has principal environmental review responsibility for this action. According to § 23-2711 of the MLRL, the Department must review the application and make a determination of completeness. Once the determination of completeness has been made, the Department requests input from local government only on the issues listed above as per §23-2711.3(v). If the Department finds that the determinations made by the local government pursuant to paragraph (a) of §23-2711.3 are reasonable and necessary, the Department shall incorporate these into the permit, if one is issued. If the Department does not agree that the determinations are justifiable, then the Department shall provide a written statement to the local government and the applicant, as to the reason why the whole or a part of any of the determinations has not been incorporated.

Thank you in advance for your review of the above and enclosed. Should you require more copies or additional information, please contact me at (518) 393-7725, ext. 109.

Sincerely,  
**Ingalls & Associates, LLP**

Amelia Leonard  
Environmental Specialist

enclosures

cc: Ryan Malone, W.D. Malone