

New York State  
Department of Environmental Conservation  
Commissioner's Determination  
of  
Lead Agency Under Article 8  
of the  
Environmental Conservation Law

**PROJECT:** Application by Hollowville Land Management, Inc. to develop a sand and gravel mine in the Town of Claverack, Columbia County

**DISPUTING AGENCIES:** Region 4 Office, New York State Department of Environmental Conservation (DEC) and the Town of Claverack Zoning Board of Appeals

This decision to designate the Region 4 Office of DEC as lead agency for the conduct of the environmental review under the State Environmental Quality Review (SEQR) process is made pursuant to Article 8 of the Environmental Conservation Law (ECL) and 6 NYCRR Part 617. This decision is based primarily on my findings that DEC has broader authority under the Mined Land Reclamation Law (MLRL) for investigation of all aspects of mining and reclamation.

The proposed project is the application by Hollowville Land Management, Inc. to develop a 75.2-acre sand and gravel mine on a 432-acre parcel in the Town of Claverack, Columbia County. The operation will be a surface unconsolidated mine with reclamation to an agricultural use.

The Region 4 Office of DEC has jurisdiction to issue or deny a MLRL permit pursuant to Article 23 of the ECL, 6 NYCRR Parts 420-425 and a freshwater wetland permit pursuant to Article 24, 6 NYCRR Part 663. The Town of Claverack Zoning Board of Appeals is required to issue a special exception permit and a site plan approval in order for the mine to be located in a Rural Recreation Residence zone in the town.

In resolving a lead agency dispute, I am guided by the three criteria listed in order of importance in paragraph 6 NYCRR Part 617.6(b)(5)(v). These are: (1) whether the anticipated impacts of the action being considered are primarily of statewide, regional or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency); (2) which agency has the broadest governmental powers for investigation of the impacts of the proposed action; and (3) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

The first criterion relates to whether the anticipated impacts are primarily of statewide, regional or local significance. The Town of Claverack Zoning Board of Appeals identified the following potential environmental concerns regarding the proposed mine: noise impacts from mining, processing

and transportation; truck traffic through the Hamlet of Claverack; visual impacts due to the proximity of the mining from New York State Routes 23 and 217; impacts from fugitive dust; and the potential for impact to state regulated surface water bodies and groundwater.

Most of the impacts identified above are of local concern and will affect the residents of the Town of Claverack. However, the potential impacts to New York State Route 23 from additional truck traffic is a regional concern. Also of regional concern are the location of the site in an agricultural district and the potential for impact to two tributaries of Claverack Creek. Tributary 11, Hollowville Creek which is classified as a C(ts) stream is particularly sensitive to any discharge of sediment due to its naturally reproducing population of trout. Because the potential environmental impacts of this project are of both local and regional concern, I must consider the second criterion in making my decision.

The next criterion, the breadth of governmental powers for investigation of impacts, substantially favors DEC as lead agency. The applicant must obtain from the Town of Claverack a special exception permit and site plan approval and a MLRL permit from DEC in order for the mine to be sited and operated. Although the authority of the Town of Claverack is extensive, it does not provide the Zoning Board of Appeals with the power to review and mitigate the primary impacts that have been identified above. The MLRL preempts local regulation of mining and the Town's ability to condition the activities on the site is limited to the following:

- ingress and egress to public thoroughfares controlled by the Town of Claverack;
- routing of mineral transport vehicles on town roads;
- requirement and conditions as specified in the mined land permit concerning setback from property boundaries and public thoroughfare rights of way, natural or man-made barriers to restrict access, dust control and hours of operation; and
- enforcement of reclamation requirements contained in the MLRL permit issued by DEC.

DEC has exclusive authority under the MLRL to regulate all aspects of the project related to mining and reclamation. The breadth of DEC's powers for investigation under MLRL is superior to the Town's authority. In resolving other lead agency disputes for mining projects, it has been recognized that the MLRL supercedes all other state and local laws related to the regulation of mining. DEC must incorporate into its permit conditions those recommendations by the Town of Claverack that are found to be reasonable, or DEC must provide a written explanation to the local government if any or part of the recommendations are not incorporated.

It is clear that the jurisdiction of the Region 4 Office regarding mining and reclamation under the MLRL is much broader than the jurisdiction of the Town of Claverack Zoning Board of Appeals.

It is the exclusive nature of DEC's jurisdiction over mining and reclamation that causes me to find in favor of the Region 4 Office in the application of this criterion.

The third criterion is based on which agency has the greatest capability for providing the most thorough environmental assessment. I find that both agencies possess, or could obtain through consultants, the staff to conduct a thorough environmental review. However, DEC staff has considerable experience in the review of mined land reclamation proposals throughout the region. This extensive experience reviewing mining applications affords DEC a greater capability to undertake the environmental review for this project.

I conclude, based on DEC's broader authority under the MLRL, the potential for impact to resources of regional concern and its greater experience in the review of mining applications, that the Region 4 Office of DEC should be lead agency for the SEQR review for the proposal by Hollowville Land Management, Inc.

This decision in no way limits the jurisdiction or responsibility of the Town of Claverack. The applicant must obtain the necessary special exception permit from the Town of Claverack before commencing the action. I strongly encourage the Town of Claverack to continue to actively participate in the conduct of the environmental review so that the record developed is accurate and contains the information needed by the Town to support its decision to issue or deny its approval. The Town of Claverack has raised several impacts that must be assessed by the Region 4 Office of DEC in completing its environmental review for this application.

Dated: August 9, 2001  
Albany, New York

/s/  
Erin M. Crotty, Commissioner

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