

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERALLETITIA JAMES  
ATTORNEY GENERALDIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

December 2, 2021

Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E Street, SW  
Washington, DC 20423

Re: *New York State Department of Environmental  
Conservation – Adverse Abandonment – Saratoga and  
North Creek Railway in Town of Johnsbury, NY*  
**STB Docket No. AB 1261**

Dear Ms. Brown:

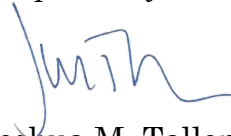
On September 10, 2018, the New York State Department of Environmental Conservation (DEC or the Department) filed an application for authorization to abandon approximately thirty miles of railroad known as the Tahawus Line (the Line), located in Warren, Hamilton, and Essex Counties in New York's Adirondack Park. The Department continues to believe that the public convenience and necessity favor abandonment of the Line.

The Department writes chiefly in response to the Saratoga & North Creek Railway (SNCR) bankruptcy trustee's November 19, 2021 letter request for "expedited resolution." As the Board well knows, these proceedings have been stayed *at the Trustee's request* since March 2020. After twenty months of marketing, the Trustee has succeeded only in soliciting a scrap-value bid from Revolution Rail, the non-carrier rail bike company whose exemption request the Board recently denied. While the Trustee claims he has "been approached by at least two other parties" who, "upon information and belief, anticipate restoring freight and/or passenger service[]" over the Line, he fails to identify these hypothetical bidders or provide any information on which to assess the seriousness or feasibility of their plans. While DEC does not necessarily oppose prompt resolution of this lengthy proceeding, the Board should certainly not deny the Department's application on the basis of the Trustee's unsupported, unverifiable claims.

If it is the Trustee's intent to sell the Line at auction, he should do so. If the successful purchaser (having presumably done some due diligence) has a demonstrably viable plan for reinstating freight service over the Line, then the purchaser can make that showing to DEC and to the Board. If the successful purchaser does not wish to provide rail service, then it will be able to address the Line's regulatory status in the context of the pending abandonment proceeding. If the successful purchaser's intent is to railbank the Line, that objective too may be accomplished within the pending proceeding.<sup>1</sup> In any case, the Trustee offers no compelling reason why the Board should move expeditiously *now*, pre-sale, when the identity and intentions of the eventual purchaser are unknown.

With respect to the Town of Newcomb's November 17, 2021 filing, the Department makes two observations: First, the Town's claim that the mine tailings at Tahawus might contain rare earth elements (and, presumably, in such quantities that rail transport would be economically viable) is wholly unsubstantiated. Second, the Town's claim notwithstanding, DEC has not granted Mitchell Stone a ninety-five-year mining permit. A copy of Mitchell's *five*-year permit is attached to this letter for the Board's reference.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Tallent', is written over the typed name.

Joshua M. Tallent  
Assistant Attorney General  
Environmental Protection Bureau  
(518) 776-2456  
Joshua.Tallent@ag.ny.gov

encl.  
cc: service list

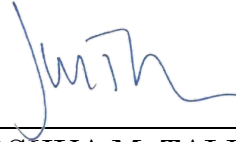
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<sup>1</sup> See Brief in Reply to Motion to Dismiss, AB 1261 at 9 (filed Nov. 17, 2021) (describing the Open Space Institute's proposal to purchase and railbank the Line).

## CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12(a), I certify that I served a copy of the foregoing letter upon all parties of record in this proceeding. Where parties of record provided an email address, service was by electronic mail; where no email address was provided, service was by first class mail.

Dated: December 2, 2021  
Albany, New York



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JOSHUA M. TALLENT  
Assistant Attorney General  
Environmental Protection Bureau  
(518) 776-2456  
Joshua.Tallent@ag.ny.gov



**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Permittee and Facility Information**

**Permit Issued To:**

Mitchell Stone Products LLC  
c/o Paul Mitchell  
15 Mitchell Ln  
Tupper Lake, NY 12986  
(518) 572-1988

**Facility:**

Mitchell Stone Tahawus Mine  
Tahawus Rd (Co Rte 25)  
Newcomb, NY 12852

**Facility Location:** in NEWCOMB in ESSEX COUNTY

**Facility Principal Reference Point:** NYTM-E: 575.429      NYTM-N: 4878.412  
Latitude: 44°03'18.0" Longitude: 74°03'29.9"

**Authorized Activity:** The mining of sand and gravel with material processing on lands owned by the permittee. Approved operations will affect the entire 23 acre life of mine area over the permit term, as identified in the approved mined land use plan.

**Permit Authorizations**

**Mined Land Reclamation - Under Article 23, Title 27**

Permit ID 5-1538-00001/00009

New Permit

Effective Date: 5/3/2018

Expiration Date: 5/2/2023

**NYSDEC Approval**

**By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: MARC S MIGLIORE, Regional Permit Administrator

Address:                      NYSDEC Region 5 Warrensburg Sub-Office  
232 Golf Course Rd  
Warrensburg, NY 12885

Authorized Signature: \_\_\_\_\_ Date     /     /    

**Permit Components**

MINED LAND RECLAMATION PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS



NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

**MINED LAND RECLAMATION PERMIT CONDITIONS**

**1. Conformance With Plans** 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 DEC staff on January 5, 2018 and consist of the following items:

mining and reclamation plans and maps prepared by Continental Placier, Inc., and received on September 21 and December 20, 2017.

**2. No Deviation From Approved Plan** 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.

**3. Bond, Surety to Remain in Force** Any required reclamation bond or other surety, in an amount determined by the Department, shall be maintained in full force and effect. Such a bond or other surety shall not be terminated until the reclamation of the mined area is approved by the department in writing.

**4. Maintain Area Markers for Permit Term** 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.

**5. Dust Control** Water or other approved dust palliatives must be applied to haulageways and other parts of the mine, as often as necessary, to prevent visible dust from leaving the mine property.

**6. No Unpermitted Discharge Outside Limits of Mine** There shall be no natural swales or channels or constructed features such as ditches, pipes, etc., that are capable of discharging waters to any offsite areas or to any areas outside the limits of the Life of Mine except those explicitly described and shown in the narrative and graphic portions of the approved Mined Land Use Plan. All silt laden water and storm water generated on, or running across, the site shall be retained within the approved project area. The permittee must comply with all applicable State Pollutant Discharge Elimination System (SPDES) permit requirements and provide necessary notifications for off-site point source discharges.

**7. Fueling of Equipment and Reporting of Spills** Fueling of equipment shall be controlled to prevent spillage. Any spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the Department's Spill Hotline number (1-800-457-7362) within 2 hours. The permittee shall retain the Department's Spill Response number for immediate access in the permittee's office and at the mine site.

**8. Mining at Least 5' Above Groundwater** All mining must be conducted at least 5 feet above the mean annual high groundwater table. The permittee must dig occasional test holes in the mine floor at least five feet deep in order to determine compliance with this condition.

**9. Post Permit Sign** The permit sign enclosed with this permit shall be posted in a conspicuous location on the worksite and adequately protected from the weather.



**10. Human or Archaeological Remains** If any human remains or archaeological remains are encountered during excavation, the permittee must immediately cease, or cause to cease, all work in the area of the remains and notify

[Regional Permit Administrator]

Work shall not resume until written permission to do so has been received from the Department.

**11. Blasting Prohibited** Blasting is prohibited at this site.

**12. No Offsite Materials at Mine** No materials (originating from offsite sources) of any kind shall be brought into this mining operation except those specified in the approved Mined Land Use Plan.

**13. No Importing or Processing Off-Site Materials** There shall be no importation, storage, disposal or processing of materials, of any kind, originating from outside the limits of the life of mine, without first applying for and obtaining a modification to this permit.

**14. Equipment at Mines Maintained to Minimize Noise** Equipment operation and maintenance:

- a. All equipment to be used in mining and mineral processing shall be maintained in proper operating conditions.
- b. All factory installed or added environmental controls and suppressors and mufflers must be utilized at all times.
- c. Mining equipment shall be operated in a manner so as to reasonably minimize noise levels during operating hours.

**15. Distance From Mine to Property Line** No land within 25 feet of any property or right-of-way boundary may be affected by any mining related activity. When mining is conducted below the level of adjacent property, the horizontal distance from the toe of the mine face to the nearest property or right-of-way boundary must be no less than 25 feet plus 1 1/2 times the depth of excavation.

**16. Strip and Stockpile Soils for Reclamation** Prior to the excavation of previously undisturbed areas, topsoil and overburden shall be stripped, stockpiled separately, and used for reclamation of mined areas. These stockpiles shall be seeded to establish a vegetative cover within 30 days, or as soon as practicable following their construction. The permittee shall locate all overburden stockpiles within the permitted area of the approved Life of Mine. Sufficient quantities of topsoil must be retained on the site for use in reclamation, unless prior approval is granted by the Department.

**17. No Mining Below Final Grade** There shall be no mining below the grades shown on the approved map and/or cross sections in any area of the mine. There shall be no backfilling in any mine floor area in order to achieve the final grades.

**18. Leave Sufficient Materials to Meet Final Grades** Sufficient materials shall be left in place in areas to be sloped (along the perimeter of the mine) to achieve the final approved grades without backfilling.

**19. No Backfilling above Prior Grades at Mine** There shall be no backfilling and/or deposition of overburden/waste rock above the original (naturally occurring ) grades that existed at this mine prior to any mining activities.



- 20. No C&D Debris Disposed Within Mine Site** No construction and demolition debris as defined in Title 7 of Article 27 of the Environmental Conservation Law and as implemented by Title 6 of New York Code of Rules and Regulations, Part 360 shall be disposed of within the mine site unless the appropriate Solid Waste Management Facility Permit has been obtained in accordance with Part 360.
- 21. Bury, Remove Wastes** All vegetative and mineral waste generated by mining activities, including trees, stumps, brush and rock rubble must be buried at the mine site and covered with at least two feet of fill material or otherwise disposed of in a manner approved by the Department.
- 22. Cover Large Rocks and Boulders** Large blocks of rocks, boulders or similar materials remaining within the permit area shall be removed or covered with a minimum compacted depth of two feet of cover material with a soil composition capable of sustaining vegetative growth.
- 23. Reclamation of Mine Floor** The final mine floor shall be scarified or ripped prior to the replacement of topsoil and overburden to alleviate compaction.
- 24. Remove Stockpiles, Equipment** All mineral stockpiles, mining/processing equipment, and personal property must be removed from the life of mine area at the time of final reclamation.
- 25. Successful Revegetation** The permittee must successfully reclaim the entire life of mine area within two years of the permit's expiration, according to reclamation plans. Successful reclamation requires a minimum of 75% vegetative cover over the entire life of mine area.
- 26. File Termination Notice** If the permittee discontinues operation, a termination notice must be filed within 30 days of termination of mining activities to the address below:  
[Regional Mined Land Reclamation Specialist]
- 27. On-site Processing** On-site processing equipment is authorized for use at the site.
- 28. Operating Hours** All mining, reclamation and associated activities (including, but not limited to: excavating, grading, processing operations, stockpiling operations, haulage operations, and maintenance operations) shall be limited to the following times: Monday through Friday 6:00 a.m. to 6:00 p.m. and Saturdays from 7:00 a.m. to 2:00 p.m. Operation of the mine is prohibited on Sundays and the following legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 29. Permit Does Not Apply to Structures and Safety Aspects** Unless expressly provided for, the issuance of this permit does not apply to any structures contained on the plans or in the specifications, nor does this permit apply to safety aspects of the operation and/or reclamation plan.
- 30. Provide Person during DEC Inspection** The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when notification is provided, be it written or verbal, at least 24 hours prior to such inspection.

**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

- 1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the



Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator  
NYSDEC Region 5 Warrensburg Sub-Office  
232 Golf Course Rd  
Warrensburg, NY12885

**4. Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Mined Land Reclamation.

**5. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**6. Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of



ownership.

## NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

### **Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

### **Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

### **Item C: Permittee Responsible for Obtaining Other Required Permits**

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

### **Item D: No Right to Trespass or Interfere with Riparian Rights**

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.