



THE LEGISLATURE  
STATE OF NEW YORK

September 27, 2023

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

**Re: Illegal Mining Operation-Sand Land-Bridgehampton-Town of Southampton**

Dear Governor Hochul:

We write you about the above referenced illegal mining operation on eastern Long Island and request your immediate attention to intervene in this matter. Our environment, our drinking water, and the rule of law are all at stake. This illegal sand mining operation is located in a Special Groundwater Protection Area, designated by the State Legislature in 1987. All of us have visited the mine and have viewed evidence provided by neighbors and environmental groups such as Citizen Campaign for the Environment, Group for the East End, and the Noyac Civic Council.

In summary, the subject sand mine has operated as a pre-existing, non-conforming use in a residential area since the 1960's. The instant controversy arose due to the efforts of the mine operator in 2014 to substantially expand the mining operation both horizontally and vertically beyond what had been previously approved by the Town of Southampton and the State. This expansion was vehemently opposed by the Town, the local community, and the aforementioned environmental organizations as an illegal expansion of a non-conforming use and as a threat to the region's drinking water.

Initially, the State DEC agreed and issued an administrative decision denying the expansion and later filing a notice to close the mine, determining that the mine was at the end of its useful life and a threat to groundwater.

Suddenly, in 2019, in a major reversal, the State DEC, behind closed doors under the guise of a "settlement", granted a permit for the entire expansion without notice to the Town of Southampton and the local community. This permit was also granted without regard to special mining legislation for Long Island enacted by the State Legislature to protect the region's drinking water.

Specifically, under Section 23-2703 of the ECL, no mining permit can be processed or granted on Long Island by the State DEC unless the agency first determines from the relevant local government that the proposed expansion is permitted by its zoning code. The State DEC ignored the law and granted the permit despite the opposition of the Town of Southampton.

In response, the Town, neighbors, and environmental groups brought an Article 78 proceeding to annul the expansion permit. After years of litigation, the State Court of Appeals finally ruled on February 29, 2023, that the State DEC had violated Section 23-2703 of the ECL by granting permits to the mine without a determination from the Town of Southampton that the expansion would be permitted by the Town Zoning Code. In fact, the Town had determined just the opposite and continues to hold that the expansion would be an illegal expansion of a non-conforming use. The State Court of Appeals annulled all permits related to the mine expansion.

After the State Court of Appeals decision, Sand Land continued to operate the mine. In response to a notice of violation issued by the State DEC, the mine operator brought an action in State Supreme Court to enjoin the State DEC from enforcing the State Court of Appeals decision. Incredibly, the mine operator relied on the theory that a subsequent modification of the annulled permit gave the mine operator the right to continue to mine. The State Attorney General, on behalf of the State, brought a counter proceeding seeking to enjoin the illegal operation of the mine beyond what was permitted by its 2013 permit (before any expansion request).

This past Friday, the State Supreme Court denied Sand Land's application for a preliminary injunction and granted the preliminary injunction sought by the State Attorney General (attached). In short, Sand Land is enjoined from operating beyond the scope of its 2013 permit. The mine operator has ignored the State Court of Appeals decision and the preliminary injunction and continues the illegal operation of the mine as of this writing.

Sand Land has illegally mined more than 400,000 cubic yards or over 1 billion pounds of sand beyond what is allowed by the 2013 permit. More than 1,200 tractor trailers of sand that should be serving as the filter for our precious drinking water has been removed since the State Court of Appeals decision. In short, there currently exists a massive "sand deficit" at the site with the excavation of the mine to a depth 40 feet beyond what is legally permitted. The State Supreme Court, in issuing the preliminary injunction, has found that irreparable harm to the groundwater and future reclamation efforts has been established.

Therefore, we request that you direct the State DEC to:


1. Immediately stop the removal of any further sand from the site.
2. Immediately require the removal of all equipment and machinery from the site and prohibit any other actions by Sand Land employees below 160 asml, which is the legal final elevation of the mine, until reclamation begins.
3. Require immediate reclamation of the mine in strict accordance with the approved reclamation plan approved by the State DEC, pursuant to the 2013 permit. Any modification of the reclamation plan that would permit Sand Land to profit from its illegal actions would be a serious threat to the rule of law.

The environment, our drinking water, and the rule of law are all at risk because of the renegade actions of one enterprise. These lawless actions also put at risk legitimate mining operations across the state as well as the validity of the State's regulatory framework for the mining industry. We request immediate action.

Sincerely,



Fred W. Thiele, Jr.  
State Assemblyman



Kevin Thomas  
State Senator



Monica R. Martinez  
State Senator



Michaelle Solages  
State Assemblywoman

cc: Basil Seggos, DEC Commissioner