

Christopher O'Neill - Fwd: Fw: Cole and Ultimate LLC

From: Jill Phillips
To: O'Neill, Christopher
Date: 7/25/2013 8:58 AM
Subject: Fwd: Fw: Cole and Ultimate LLC
Attachments: 07242013 Cole -- Albany Co ClerkTransmittal Letter and request to docket judgment and providetranscripts.pdf; Cole -- NOE and Attached Access Decision with Filing Stamp.pdf; Cole -- AOS on Ultimate LLC 07242013.pdf

Chris,

The Access Order has been signed!! Now we just have to wait for them to serve it on Cole, I'll let you know when they do.

-Jill

>>> Rich Ostrov 7/24/2013 4:26 PM >>>
Fyi.

>>> "Michael J. Myers" <Michael.Myers@ag.ny.gov> 7/24/2013 4:03:50 PM >>>
Rich—Before he retired, Kevin obtained a judgment on behalf of the Dept. against Cole and Ultimate LLC requiring access to the site and payment of a \$15K penalty. Attached are a copy of the decision and order with notice of entry, the request to docket the order as a judgment, and an affidavit of service on the corporation. We have sent the notice of entry to our process server to be served personally on Cole. Kevin's file indicates that Jill Phillips was the R4 attorney assigned, but it's my understanding she's moved over to central office so am sending these materials to you. I will let you know when Cole has been served. Let me know if you have any questions. Thanks.--Mike

Michael J. Myers
Chief, Affirmative Litigation Section
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
[\(518\) 402-2594](tel:(518)402-2594)
michael.myers@ag.ny.gov

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ALBANY

New York State Department of
Environmental Conservation, by
its Commissioner, Joseph J. Martens,

Petitioner,

- against -

Shaun Cole and Ultimate, LLC,

Respondents.

NOTICE OF ENTRY

Index No. 989-13

RJI No. 01-13-109339

PLEASE TAKE NOTICE that a Decision, Order and Judgment to Permit Entry Upon Land and Imposing Civil Penalty, a copy of which is attached, was signed on July 19, 2013 by the Honorable Kimberly A. O'Connor, J.S.C. and filed and entered in the Office of the Clerk of Albany County on July 24, 2013.

Dated: July 24, 2013
Albany, New York

To: Shaun Cole
85 Skyway Drive
Scotia, New York 12302

Ultimate LLC
99 Freemans Bridge Road
Scotia, New York 12302

ERIC T. SCHNEIDERMAN
Attorney General of New York
Attorney for Petitioner

By:



MICHAEL J. MYERS
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 402-2594

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF ALBANY**

Albany County Clerk
Document Number 11442685
Rcvd 07/24/2013 11:11:18 AM



New York State Department of
Environmental Conservation, by
its Commissioner, Joseph J. Martens,

Index No. 989-13

RJI No. 01-13-109339

Petitioner,

- against -

Shaun Cole and Ultimate, LLC,

**Acting Justice
Kimberly A. O'Connor**

Respondents.

**DECISION, ORDER AND JUDGMENT
TO PERMIT ENTRY UPON LAND
AND IMPOSING CIVIL PENALTY**

WHEREAS, the petitioner, New York State Department of Environmental Conservation ("DEC"), by its Commissioner Joseph Martens, having moved by a February 20, 2013 Notice of Petition and Verified Petition as well as the papers listed below for an order pursuant to Environmental Conservation Law ("ECL") § 27-2727 and § 27-1313 to enter upon the real property of the respondent herein, Ultimate, LLC, ("Ultimate") located at 107 Freemans Bridge Road, Schenectady, New York, ("Site") for the purpose of investigating and remediating hazardous waste at the Site as well as for an order imposing civil penalties on Ultimate and respondent Shaun Cole ("Cole") for obstruction of access to the Site by DEC and its authorized agents; and

WHEREAS neither respondent filed any papers in opposition to the Notice of Petition and Verified Petition nor requested oral argument; and

WHEREAS the Court having read and considered all papers submitted and having had due deliberation thereon, this Court finds that petitioner and its authorized agents are entitled to enter onto and have full access to the Site, an inactive hazardous waste disposal site, to perform activities authorized under ECL Article 27, Title 13; and

WHEREAS the undisputed evidence is that both respondents have obstructed such access to the Site;

NOW, THEREFORE, it is hereby

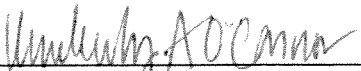
ORDERED that the petitioner DEC, its employees, agents, contractors and/or designated representatives, are authorized to enter upon the real property owned by respondent Ultimate located at 107 Freemans Bridge Road, Schenectady, New York, to inspect, investigate, and perform remediation and all activities authorized by Article 27 of the ECL; and it is further

ORDERED that neither respondent Ultimate nor Respondent Cole shall impede, block, delay, stall or otherwise hinder or interfere with DEC, its employees, agents, designated representatives and/or contractors at any time as they enter upon, occupy or depart respondent's property pursuant to this Order, or allow others to do so; and it is further

ORDERED and ADJUDGED that respondents Ultimate and Cole are jointly and severally liable to petitioner in the amount of \$10,000, as a civil penalty

for past obstruction of DEC's statutory right of access to the Site, and are indebted to petitioner for same, and judgment is entered in favor of petitioner.

Dated: Albany, New York
July 19, 2013


HON. KIMBERLY A. O'CONNOR
Justice of the Supreme Court, Acting

Papers Considered:

1. February 20, 2013 Notice of Petition;
2. February 20, 2013 Verified Petition;
3. February 20, 2013 Affirmation of Assistant Attorney General Kevin P. Donovan with attached exhibits;
4. February 15, 2013 Affidavit of Christopher O'Neill, P.E. with attached exhibits;
5. February 20, 2013 Memorandum of Law in Support of the Petition



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

July 24, 2013

Mr. Thomas G. Clingan, Clerk
Albany County Clerk's Office
County Court House Room 128
16 Eagle Street, Albany NY 12207-1077

Re: New York State DEC, etc., v. Shaun Cole and Ultimate, LLC
Index No. 989-13

Dear Mr. Clingan,

Enclosed for filing in the above-referenced matter is the original Affidavit of Service of Eric Selin sworn to on July 24, 2013, and the original Notice of Entry dated July 24, 2013 attaching a copy of the July 19, 2013 Decision, Order and Judgment to Permit Entry Upon Land and Imposing Civil Penalty.

In addition, please docket the Judgment against the defendants jointly and severally as follows:

Judgment Amount: \$10,000.00
Statutory Costs \$200.00

Total: \$10,200.00*

*Plus Interest in the amount of 9% simple interest per annum from July 19, 2013.

Once the Judgment has been docketed, please return to me in the enclosed, self-addressed, stamped envelope three Transcripts of Judgment for filing in other counties.

Please call me if you have any questions at (518) 474-2895. No fee is tendered pursuant to C.P.L.R. § 8017 and Executive Law § 161.

Thank You.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Selin".

Eric E. Selin, Legal Assistant 2

Enclosures
cc: Michael J. Myers, AAG

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ALBANY

New York State Department of
Environmental Conservation, by
its Commissioner, Joseph J. Martens,

**AFFIDAVIT OF
SERVICE**

Petitioner,

Index No. 989-13

- against -

RJI No. 01-13-109339

Shaun Cole and Ultimate, LLC,

Justice O'Connor

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

ERIC SELIN, being duly sworn, deposes and says:

That I am over 18 years of age and am employed by the New York State office of the Attorney General. Deponent served the Notice of Petition, Verified Petition and Memorandum of Law in Support of the Verified Petition on the defendant, ULTIMATE, LLC, by personally delivering two copies of the Notice of Entry with attached Decision, Order and Judgment to Permit Entry Upon Land and Imposing Civil Penalty, to the office of the Secretary of State at One Commerce Plaza, 99 Washington Ave. Albany, New York, at 12:45 p.m., on July 24, 2013, and there leaving said copies with a receptionist, who accepted service on behalf of the Secretary of State.

Service was made in this manner pursuant to § 303 of the Limited Liability
Company Law.



ERIC SELIN

Sworn to before me on
July 24, 2013



DANIEL LEINUNG
Notary Public, State of New York
No. 02LE6234413
Qualified in Columbia County
Commission Expires January 18, 2015