

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Environmental Quality, Region 4

1130 North Westcott Road, Schenectady, NY 12306-2014

P: (518) 357-2045 | F: (518) 357-2398

www.dec.ny.gov

### TRANSMITTED ELECTRONICALLY

March 27, 2023

Mr. Prince M. Knight, Environmental & Compliance Manager  
Mr. Wade Scheel, VP of EHS  
Tradebe Environmental Services, LLC  
628 South Saratoga Street  
Cohoes, New York 12047

Re: Southern Overburden Storage Area  
NYR No. NY10Q976  
SPDES Permit NY0004880  
MLR Permit 4-0103-00016/00019

Mr. Knight and Mr. Scheel:

This letter serves to provide you with a Notice of Violation (NOV) at the Norlite Facility (Norlite or Facility) regarding the lack of full implementation of the Stormwater Pollution Prevention Plan (SWPPP), dated March 2009 (Revision 2) as prepared by Spectra Environmental Group for the Southern Overburden Storage Area (SOSA) and accepted by the Department on April 1, 2009. This violation is based on observations, photographs, and discussions documented from the EPA/NEIC/NYSDEC inspection of the Facility in October 2022. It was noted that uncontrolled stormwater discharges occurred to the south along the SOSA access road, to the east and into an unnamed pond that is located on land not owned/leased by Tradebe, and to the north into the Quarry Pond at a volume/quality that is not in accordance with the SWPPP (Table 1).

Appendix C of the SWPPP contains a certification agreeing to comply with the terms and conditions of the SWPPP and agreeing to implement corrective actions identified by a qualified inspector during a site inspection.

The following items have not been implemented as required by the above referenced SWPPP and identified by the qualified inspectors during the October 2022 Facility inspection:

1. *For all berms, pipe drains and tile drains were to be installed 50 feet on center at the base of the berm in a crushed shale drainage layer to convey runoff under the completed berm to the drainage swales on the outer slopes of the berm. If completed, please submit As-Built drawings to R4-DOW and R4-Mining for our review as prepared by a licensed New York State Professional Engineer.*



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2. All disturbed areas will be seeded and mulched with hay as soon as practicable (within 14 days after all earthwork has been completed), unless construction is temporarily ceased and will resume within 21 days. The lower half of the berm will be hydroseeded as soon as the midslope diversion swale is constructed and stabilized. **Temporary erosion control measures shall be left in place and maintained until the vegetative cover has been established. Silt fence along the permanent diversion will remain in place until channel vegetation has become established (bold/emphasis added).**
3. Centralized spillways will convey water accumulated by the diversion swales to the mine excavation and existing settling pond (Quarry Pond). These spillways are segmented with energy dissipaters at each berm terrace to reduce velocity and prevent erosion.
4. **During and after construction, there will be no off-site discharge from construction areas (bold/emphasis added).** A sediment trap must be installed at the location shown on Plate 2 because the topography does not allow for gravity drainage of the temporary swale towards the Quarry Pond.
5. Runoff from the proposed SOSA for the 100-year storm is projected to be 11.329 acre-feet. This amount of runoff would result in an increase in the Quarry Pond elevation of 2.5 feet. With a minimum of five (5) feet of freeboard and the 2.5 feet increase from the 100 -year storm, 2.5 feet of freeboard would remain. Therefore, discharging runoff from the SOSA to the Quarry Pond will be well within the capacity of the pond and will not require enlarging the pond or constructing an additional pond. The discharge rate from the Quarry Pond to Outfall No. 003 is limited by the existing pump capacity. **It will not be necessary to increase the pumping rate to accommodate runoff to the SOSA (bold/emphasis added).**
6. Operation & Maintenance: Conduct for the first time after the construction inspection is completed. Conduct quarterly (four times) for the first year and annually after that for the life of the controls. All completed Inspection Forms and Post-Construction Maintenance Inspection Reports for Permanent Stormwater Controls will be maintained on-site until all disturbed areas have achieved final stabilization and the Notice of Termination has been submitted to the NYSDEC.

Photographs from the EPA/NEIC/NYSDEC inspection in October 2022 documented a lack of full implementation of the SWPPP:

1. Significant erosion on the eastern portion of the SOSA due to a lack of proper vegetation.



2. Significant erosion present on the northeastern portion of the property resulting in an uncontrolled release of stormwater to the Quarry Pond in a location that is not in compliance with the SWPPP. It is also noteworthy that little to no vegetation has been established at the end of the growing season (October). This is directly related to the lack of proper growing conditions (lack of topsoil) as the current conditions (gravel, clay, etc.) are not conducive to the establishment or continued growth of a vegetative cover. In addition to the bare surface, the deep erosion is caused by the lack of drainage pipe installed behind the berms. This results in stormwater flow at high velocities and channeling as shown below.





The photographs below document the poor quality of stormwater discharge from the SOSA into the Quarry Pond. Such conditions do not comply with the terms of the SWPPP.



As set forth in the Department's Southern Overburden Storage Area letter dated December 6, 2022, Norlite was required to submit the following information by March 1, 2023 (which has not been received to date):

- 1) A comprehensive review of the current stormwater conditions at the SOSA, including new HydroCAD modeling, to the attention of NYSDEC Region 4 Division of Water to determine if compliance with the SWPPP is being achieved (including results from any related hydrogeologic monitoring within or proximate to the SOSA area).
- 2) The review must also include corrective actions to address current conditions and any future plans for overburden management and stockpiling.

On March 21, 2023, Norlite's consultant submitted a SOSA Summary Report that provided details of the site inspections that occurred within the SOSA from January 2021 through February 2023. The report identifies areas of concern within the SOSA and temporary stabilization efforts that have been implemented over the past two years (most, if not all, of which have been unsuccessful). The report does not contain updated HydroCAD modeling, nor does it contain a description of sufficient corrective measures that will be implemented in CY 2023 or information pertaining to the future overburden management and stockpiling plan. The last sentence of the letter states, "PWGC has been told that Norlite has schedule repairs for April 3, 2023. The repair to be done include installation of new haybales and road stone". The proposed corrective measures do not address the several outstanding issues within the SOSA that must be remediated.

### **Mined Land Reclamation (MLR) Permit**

Under ECL § 71-1305(2), it is unlawful for any person to violate any of the provisions of or fail to perform any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.

Under Special Condition 1 of Norlite's MLR Permit, all activities authorized by the permit must be in strict conformance with the approved plans by the applicant or applicant's agent as part of the permit application. The SWPPP is listed as an approved document under Special Condition 1, Document 11. Therefore, non-compliance with the SWPPP constitutes non-compliance with the MLR permit.

The inspection letter sent by MLR staff on March 27, 2023 (attached) details the stabilization and stormwater control maintenance work that must be completed within the SOSA by October 2, 2023. The construction of the SOSA to the full extent described in the approved SWPPP is the approved reclamation objective for this area.

## **State Pollutant Discharge Elimination System (SPDES) Permit**

6 NYCRR 750-2.1(e) states that permittees must comply with all terms and conditions of their SPDES permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law (ECL) and the Clean Water Act and is grounds for enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.

Under Special Condition 5 of Norlite's SPDES Permit, Norlite is responsible for ensuring that the provisions of each SWPPP are properly implemented. Therefore, Norlite's failure to comply with the SWPPP constitutes a violation of the SPDES Permit, 6 NYCRR 750-2.1(e), and the ECL.

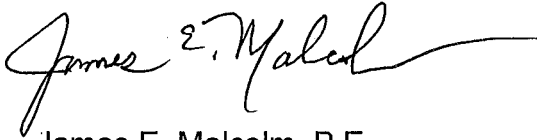
**Please submit a plan describing how compliance will be achieved under the current SWPPP on or before April 15, 2023.** Please note the end date for related SWPPP compliance activities must be October 2, 2023 in order to provide sufficient time for establishing a proper vegetative cover over the entire SOSA.

An alternative approach is to develop a new SWPPP that reflects the current conditions and planned construction activity relative to the SOSA and submit for Department review on or before May 1, 2023. Any new SWPPP must be prepared in accordance with the New York State Stormwater Management Design Manual (2015) and the New York Standards and Specifications for Erosion and Sediment Control. It is recommended that you retain a qualified professional (CPESC) and/or licensed New York State Professional Engineer to assist you in development of a new SWPPP. Please note that a new SWPPP must be accepted by the MS-4 authority (Town of Colonie) and the Department before submitting for coverage under the Construction General Permit (by e-NOI) and beginning any related construction.

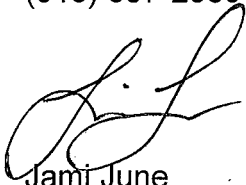
Please note that if revisions are to be made to the SWPPP or a new SWPPP is developed to account for proposed changes to the configuration of the SOSA, then a MLR permit modification application must be submitted to DEC that includes an updated Mined Land Use Plan which describes all proposed changes to the SOSA construction plan and final Reclamation Plan. A revised Reclamation Plan Map and Reclamation Cross Sections would also need to be included in the application.

Please contact us if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Malcolm", with a long horizontal flourish extending to the right.

James E. Malcolm, P.E.  
Professional Engineer I  
Region 4 - Division of Water  
james.malcolm@dec.ny.gov  
(518) 357-2385

A handwritten signature in black ink, appearing to read "Jami June", with a large, stylized initial "J" and a horizontal flourish.

Jami June  
Mined Land Reclamation Specialist II  
Region 4 – Division of Mineral Resources  
jami.june@dec.ny.gov  
(518) 357-2162

Ecc: E. Gallagher, R4-OGS/J. Weidman, RWE  
D. Monk, Tradebe