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Christopher Amato, Esq. Conservation Director and Counsel January 4, 2024

John M. Burth Adirondack Park Agency PO Box 99 Ray Brook, NY 12977

Beth Magee New York State Department of Environmental Conservation Region 5 232 Golf Course Rd. Warrensburg, NY 12885

# Re: Significant Violations by Barton Mines Company, LLC Ruby Mountain Garnet Mine NYSDEC Mine Permit #5-5230-00002/00002 APA Permit: P79-140, P70-356, P87-39, P87-39A, P87-39B, P88-393, P88-393A

Dear Mr. Burth and Ms. Magee:

I write on behalf of Protect the Adirondacks!, Inc. concerning significant ongoing violations by Barton Mines Company, LLC ("Barton") of environmental statutes and regulations administered by the Department of Environmental Conservation ("DEC") and the Adirondack Park Agency ("APA"). These violations are occurring at Barton's Ruby Mountain Garnet Mine site in the Town of Johnsburg, Warren County (the "Mine Site"). As you know, Barton has applied to DEC and APA for modifications to its existing environmental permits to allow a significant expansion of the Mine Site, and that application is currently pending before the agencies.

The Mine Site includes an immense tailings waste disposal site that currently occupies more than 73 acres and is over 2,000 feet in height. Barton has disposed of, and continues to dispose of hundreds of thousands of cubic yards of tailings waste annually at this on-site disposal facility. As discussed in detail below, the tailings disposal site, which Barton euphemistically refers to as the "Resource Mineral" ("RM") pile, is a solid waste management facility as defined by Environmental Conservation Law ("ECL") § 27-0701(2) and therefore requires a Part 360 permit pursuant to

ECL § 27-0707(1). To our knowledge, Barton has never applied for or obtained a Part 360 permit for the tailings waste disposal site and it is therefore operating in continuing violation of ECL Article 27 and DEC's Part 360 regulations.

Barton is also operating in violation of its APA permit. Barton's current APA permit sets specific limits on the allowable size of the tailings disposal site and the APA staff has informed Barton that it has exceeded those limits. Because the APA permit states that the entire permit becomes void if Barton fails to comply with any condition in the permit, Barton is currently operating the mine without an APA permit in violation of the Adirondack Park Agency Act ("APA Act").

We urge DEC and APA to immediately suspend review of Barton's pending application for a permit modification pending resolution of these violations as provided for in DEC's regulations.

# Barton is in Violation of ECL Article 27 and Part 360

# A. Barton's Tailings Waste Meets the Definition of "Solid Waste"

As described by Barton, the tailings waste generated by its mining operations is material that has been removed from the ground and is processed through a crusher and a milling operation prior to being transported to the tailings disposal site for permanent disposal:

Material is taken from the active quarry area to the nearby primary crusher. Crushed material is conveyed to the onsite mill for additional processing and removal of RM. Residual Minerals from the mill are hydraulically conveyed to the RM engineered storage facility and water is recovered through a series of drains and ponds for reuse in the beneficiation process . . . RM produced at the mill are hydraulically conveyed [to] an engineered storage facility where they are separated by a cyclone system into fine-grained (silt/clay particle size) and coarse-grained (sand particle size) RM. Fine-grained RM that leaves the cyclone system is in the form of a slurry that is conveyed via gravity to the Upper Pond where they settle to the bottom and water filters through the engineered storage facility and the water is recovered in the lower ponds for reuse in material processing at the onsite mill. Coarse-grained RM remains at the engineered storage facility.

Mine Permit Amendment & Modification, Barton Mines Company, LLC, Ruby Mountain Garnet Mine (Dec. 2023) ("Barton Applic.") at 18-19. Thus, the tailings disposal site (which Barton refers to as the "engineered storage facility")<sup>1</sup> consists of mining wastes generated by the mill following processing.

Barton's tailings waste meets both the statutory and regulatory definition of "solid waste." ECL § 27-0101(1) defines "solid waste" as:

all putrescible and non-putrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard

<sup>&</sup>lt;sup>1</sup> Contrary to Barton's claim, the tailings disposal site is not "engineered" because to our knowledge Barton has not submitted any engineering designs or plans for the site.

or rejection, . . . including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form.

This definition is further refined by DEC's implementing regulations, which define "solid waste" as "discarded materials including solid, liquid, semi-solid, or contained gaseous material, *resulting from* industrial, municipal, commercial, institutional, *mining* or agricultural operations or from residential activities including materials that are recycled or that may have value." 6 NYCRR § 360.2(a)(1) (emphasis added).

Barton acknowledges that "[t]here are no permitted, economically feasible, Barton-owned properties that can accommodate the volume of residual minerals generated from the mine." Barton Applic. at 26. Thus, by Barton's own admission, the tailings waste is "discarded or rejected as being spent, useless worthless or in excess," and constitutes "discarded materials . . . resulting from . . . mining . . . operations." ECL § 27-0101(1); 6 NYCRR § 360.2(a)(1). It therefore meets the statutory and regulatory definition of "solid waste."

Barton claims that "[t]he residual minerals meet NYSDEC's criteria for uncontaminated rock to be used as a substitute for conventional aggregate, pursuant to 6 NYCRR Part 360-1.5(b)(11) and are not considered a solid waste (Appendix R)."<sup>2</sup> Barton Applic. at 19. However, the cited DEC regulation has been repealed, and the documentation in Appendix R to the application is an expired DEC Beneficial Use Determination ("BUD") from 2015 that is based on the repealed regulation. Thus, the RM waste is not covered by an existing BUD.

In any event, it is clear that the tailings waste is not destined for beneficial use—or reuse of any kind—because the application assumes that the vast majority of the waste will be permanently disposed of in a massive tailings disposal site occupying over 100 acres that will be "reclaimed" by being covered with topsoil and revegetated—much like the final cap on a solid waste management facility. *See* Barton Applic. at 5 (stating that Barton will "incorporate concurrent reclamation of the RM storage facility through native plantings to progressively blend the facility into the surrounding landscape.").

# B. The Tailings Disposal Site is a Solid Waste Management Facility

ECL § 27-0101(2) defines a "solid waste management facility," as:

any facility employed beyond the initial solid waste collection process including, but not limited to, transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting,

<sup>&</sup>lt;sup>2</sup> Appendix R does not include any documents in the December 2023 application, but the 2015 DEC BUD is included in the original 2020 application.

composting or pyrolization of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities.

DEC's regulations further define a solid waste management facility as "a location and associated devices employed in the management of solid waste beyond the initial collection process. The term includes all structures, appurtenances or improvements on the land used for the management or disposal of solid waste." 6 NYCRR § 360.2(b)(101). Barton's tailings disposal site is a location for management of solid waste beyond the initial collection process because the tailing wastes disposed of there are initially collected at the mill. The milling operation is an industrial process, that includes chemicals, washes, grinders, separators, and waste material that Barton refers to as "slimes." The mill's industrial wastes are then:

[H]ydraulically conveyed [to] an engineered storage facility where they are separated by a cyclone system into fine-grained . . . and coarse-grained RM. Fine-grained RM that leaves the cyclone system is in the form of a slurry that is conveyed via gravity to the Upper Pond [on the tailings disposal site] where they settle to the bottom and water filters through the engineered storage facility and the water is recovered in the lower ponds for reuse in material processing at the onsite mill. Coarse-grained RM remains at the engineered storage facility [the tailings disposal site]."

Barton Applic. at 19. The tailings disposal site receives industrial wastes from the milling process, including fine-grained and coarse grained tailings, liquids and "slimes." The tailings disposal site therefore meets the statutory and regulatory definitions of a "solid waste management facility."

Barton states plainly that it plans to permanently "store"—which means dispose of because there is no plan to ultimately use the industrial tailings waste— its tailings waste on-site. The application acknowledges that "Barton's long-term plan is to store all fine-grained RM within the confines of the quarry while expanding the coarse-grained RM engineered storage facility, both laterally and vertically . . . *In other words, the long-term RM strategy is for the majority of coarse-grained RM to be deposited in the RM engineered storage facility.*" *Id.* at 30; (emphasis added). Barton's plan to "store" the coarse-grained industrial tailings waste in the waste pile in perpetuity constitutes disposal of that waste. *See* 6 NYCRR § 360.2(b)(262) (specifying that "any waste retained on-site for a period in excess of 12 months constitutes disposal.").

Furthermore, the current APA permit for the Mine Site makes clear that the tailings waste disposal site is a solid waste management facility, and not merely an "engineered storage facility" as claimed by Barton. Barton Applic. at 19. APA Permit 87-39B refers to the tailings disposal site as a "single wet tailing *disposal area*;" "mineral tailing *disposal area*;" a "single *disposal area*;" the "*disposal facility*;" and the "*disposal pile*." APA Permit 87-39B, annexed hereto as Exhibit A, at 1, 3, 4; (emphases added). The APA permit also states that "[t]he mine operation and its employment and economic benefits are dependent upon economical *disposal* of tailings." *Id.* at 6; (emphasis added).

Thus, the RM pile is a solid waste management facility requiring a permit and Barton's failure to apply for and obtain a solid waste management facility permit for its tailings waste disposal site constitutes a continuing violation of ECL Article 27 and Part 360.<sup>3</sup>

# **Barton is Operating Without a Valid APA Permit**

The Findings of Fact in Barton's current APA permit specify the allowable maximum size and capacity of the tailings disposal site as follows:

The single [tailings] disposal area would have a final 73 acre size, a peak elevation of 2,275 ft. msl, 5.9 million cubic yard volume capacity, and an estimated life of 35 years or the year 2033.

APA Permit 87-39B at 3.

It is clear from Barton's application and the APA's response to it that Barton has violated the size limits for the tailings disposal site imposed by the APA Permit. The APA NIPA states:

Figure 2 titled "Life of Mine Phases" within the narrative titled "Mine Permit Amendment and Modification" indicates that Residual Mineral (RM) pile lateral expansion began in year 2020. Please revise this figure and all references to it *to clearly indicate that RM pile expansion beyond what is currently permitted by Agency Permit* 87-39B has not been authorized and Phase 1 has not commenced.

APA NIPA at 3; (emphasis added). Barton's response to the NIPA does not contest the APA's claim that Barton's expansion of the tailings disposal site is "beyond what is currently permitted" by the existing APA permit. *See* H2H Geoscience Engineering, Response to Comments (Dec. 2023).

In fact, information provided in Barton's application supports APA's determination that the existing tailings disposal site has expanded beyond what the APA permit allows. The application states that Barton generates approximately 250,000 cubic yards of tailings waste annually. Barton Applic. at 26. Assuming that Barton generated this volume of industrial tailings waste commencing in 1988 (though this level of waste generation could well have begun earlier), by 2023 Barton by its own estimates had disposed of approximately 8.7 million

<sup>&</sup>lt;sup>3</sup> The need for the engineering, technical and environmental analysis and review required by an application for a Part 360 permit is underscored by the APA's Notice of Incomplete Application dated June 12, 2023 ("APA NIPA"), which states:

<sup>[</sup>I]t is unclear as to whether the Agency can authorize the expansion of the geotechnically complex RM pile at this time when it is subject to change during construction and those unanticipated changes have not been evaluated for potential undue environmental impacts.

million cubic yards of waste in the RM pile—far above the 5.9 million cubic yards authorized by the APA permit.<sup>4</sup>

Barton's violation of the APA permit condition limiting the size of the tailings waste disposal site means that its mining operations are not authorized by a valid APA permit. Barton's APA permit provides:

The project shall be undertaken as described in the application and the Findings of Fact herein, and in compliance with the Conditions herein. *Failure to comply with the application, Findings of Fact, or Conditions voids the permit.* 

APA Permit 87-39B at 8; (emphasis added).

Thus, by its own terms, the existing APA permit has been voided by Barton's failure to comply with the permit's limitations on the size of the tailings waste disposal site, and Barton is therefore operating its mine in violation of the APA Act. Executive Law § 809(2)(a).

# **Review of Barton's Application Should be Suspended**

Due to the violation of its existing permit, APA should immediately suspend its review of Barton's pending application for a permit modification pending resolution of this violation.

Moreover, the DEC regulations provide for suspension of the permit review process during the pendency of an enforcement action:

Processing and review of an application may be suspended by written notice to the applicant if an enforcement action has been or is commenced against the applicant for alleged violations of the ECL or other environmental laws administered by the department at the facility or site that is the subject of the application. The alleged violations may be related to the activity for which the permit is sought or to other provisions of law administered by the department.

Such suspension of processing and review may remain in effect pending final resolution of the enforcement actions.

6 NYCRR § 621.3(e).

Because Barton is in violation of ECL Article 27, Part 360 and the APA Act, we urge DEC and APA to immediately initiate an enforcement action against Barton and to suspend review of Barton's application pending resolution of these significant violations.

We look forward to your response to this letter.

<sup>&</sup>lt;sup>4</sup> Barton conveniently ignores the capacity limitation in the APA permit when describing the permit conditions applicable to the tailings waste disposal site. *See* Barton Applic. at 19 ("APA Permit 87-39B allows RM engineered storage facility lateral footprint of 73.0 acres, peak elevation of 2,275 ft. amsl, and a reclamation side slope of 2:1.").

Sincerely,

Una and

Christopher Amato Conservation Director and Counsel

Cc: Basil Seggos, DEC Commissioner Tom Berkman, DEC Deputy Commissioner and General Counsel John Ernst, APA Chair Barbara Rice, APA Executive Director David Plante, APA Deputy Director for Regulatory Affairs

# EXHIBIT A

To The County Clerk: This permit is void unless recorded before September 26, 1994
Please index it in the grantor index under the following names:
1. Barton Mines Corporation 2. Trust of C.R. Barton, Jr.

#### THIS PERMIT AMENDS PERMIT 87-39 ISSUED JANUARY 7, 1988

STATE OF NEW YORK EXECUTIVE DEPARTMENT ADIRONDACK PARK AGENCY P.O. Box 99 Ray Brook, New York 12977 (518) 891-4050

In the Matter of the Application of

BARTON MINES CORPORATION AND TRUST OF C.R. BARTON, JR.

. .

P. .

PERMIT

Project 87-39B

for a permit pursuant to \$809 of the Adirondack Park Agency Act

#### SUMMARY

Barton Mines Corporation is granted a permit, on conditions, for an amended mineral extraction tailing pile in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Johnsburg, Warren County.

#### AUTHORIZATION

This permit authorizes a single wet tailing disposal area at Tailing Valley, Ruby Mountain Site, provided it is undertaken as described in the application and the Findings of Fact herein and in compliance with the Conditions herein. Failure to undertake the project in accordance with the application, Findings of Fact and Conditions voids the permit. In the case of conflict, the Conditions control.

#### FINDINGS OF FACT

### <u>General</u>

 The 801± acre project site is currently owned by H. Hudson Barton, Clarence J. Lewis, Jr., and A.D. Barton, Jr., as Trustees under an Agreement of Trust established by C.R. Barton, Jr., et al. dated August 25, 1953. The property is described in the following four deeds recorded in the Warren County Clerk's Office:

## Date of Recordation Book Page

· ·

March 16, 1948 June 22, 1960	262 399	129 313
April 6, 1988	704	249

Barton Mines Corporation, a New York corporation, has its principal office at North Creek, Warren County, New York, and leases the project site.

The project site is a shown on the Town of Johnsburg, Warren County Tax Map Section 2, Block 1 as Parcels 29, 2 and 3 and Section 4, Block 1, Parcels 19 and 20.

- 2. The property lines for the project site are shown on a map entitled "Topographic Maps of Barton Mines Corporation-Ruby Mountain Project," by David F. Barrass, L.S., dated December 15, 1990 and "Map of Part of Lands of Barton Mines Corporation," by Leslie W. Coulter, dated December 24, 1947.
- 3. The original 580± acre project site is roughly bisected by Brown Pond Brook, which flows in a southerly direction. Lands east of the brook are classified Industrial Use and lands west of the brook are Resource Management on the Adirondack Park Land Use and Development Plan Map. A small portion of the project site, southeast of Thirteenth Lake Road, is classified Rural Use. In 1988, the applicant purchased an additional 221 acres southwest of Tailings Valley Area.

A portion of the Finger Valley site lies in a critical environmental area within one-eighth of a mile of State land designated the Siamese Ponds Wilderness Area pursuant to the State Land Master Plan.

## Project History

- 4. On May 18, 1979, the Agency conceptually approved, pursuant to Section 809(13)(d) of the Adirondack Park Agency Act, Project 78-401, a mineral extraction, proposed by Barton Mines Corporation (BMC). On May 23, 1979, BMC applied for final approval of the first phase (initial clearing and grading) of this large scale project. On June 26, 1979, the Agency issued Permit P79-140 approving this phase on several conditions.
- 5. On February 11, 1980, the Agency issued Permit P79-356 approving the final phase of the mineral extraction use on a 580 acre parcel of land on the slopes of Ruby Mountain and Big Thirteenth Lake Mountain in the Towns of Johnsburg (548 acres) and Indian Lake (32 acres).

In Agency Project 81-20, the electric powerline to serve the site was authorized.

6. On March 2, 1987, BMC applied for a major amendment to Permit P79-356 to allow it to dispose of its tailings using a wet rather than a dry disposal method at two locations in one drainage basin on its property. This was deemed a material change, resulting in Agency Permit 87-39 issued January 7, 1988. The starter dam and initial disposal at Tailing Valley was started but no disturbance has occurred at the Finger Valley site. As a result of a feasibility study required by Condition 13, the Agency staff and applicant recognized difficulties in a wetland replacement proposal.

The Tailings Valley and Finger Valley sites would occupy 29 and 30 acres, respectively, at peak capacity, and have an estimated operational life of 8 and 9 years respectively.

On July 24, 1992, the Agency issued Permit 87-39A authorizing an effluent pipeline across a wetland. To date, an estimated 1 million cubic yards has already been disposed in Tailing Valley.

7. The effluent discharge to Thirteenth Brook from the settling ponds is subject to DEC SPDES Permit NY-0034959 and consent order R5-0846-90-3 dated December 4, 1991. The starter dam is subject to DEC file 5-5230-00002/00003-1.

## Description of the Amended Project as Proposed

- 8. The applicant proposes to amend the mineral tailing disposal area from 2 areas to one single area (Tailings Valley) and thereby avoid disturbance to Finger Valley area and its associated wetland and water resources. A summary of the details and documents on the proposed changes to Project 87-39 are as follows:
  - a. The single disposal area would have a final 73 acre size, a peak elevation of 2,275 ft. msl, 5.9 million cubic yard volume capacity, and an estimated life of 35 years or the year 2033.
  - b. The design of the project is described in a report entitled "B112102, Design of the Expanded Tailings Valley Tailings Facilities, Ruby Mt. Project," by Steffen, Robertson and Kirsten, Inc., dated October 1993.
  - c. Site reclamation is described in a report entitled "Addendum to Report 80201/3, Ruby Mt. Garnet Mine, Mine and Reclamation Plan Design," by Samuel B. Bamberg, dated September 1993. In a letter dated February 24, 1994, the applicant agreed to modify the reclamation plan by concentrating the deposition for the next two years into the southwest corner or the area of greatest off-site visibility, so that a test area and phased reclamation can begin as soon as practical. Once the

upper embankment becomes operational, some final reclamation process would begin between the seventh and fourteenth year of operation.

- d. The advantages of the amended project are numerous:
  - Volume capacity increased from 2.14 to 5.9 million (1) cubic yards.
  - Extension of mine life from 17 to 30 to 35 years. (2)
  - Lower pile elevations and shorter distances to (3)
  - pump slurry, hence lower operating costs. Avoid costs for wetland replacement, shorter road (4) and one less starter embankment.
  - Negligible increase of total acreage of (5) disturbance,
  - Reduced areas of off-site visibility, including (6) receptor sites 5, 6A and 7B,
  - (7) Avoid disturbing 1.9 acre wetland and drainage associated with Finger Valley.
- A topsoil storage area is shown on Figure 4.7. e. letter of credit for reclamation is currently at \$226,600 as required by DEC.
- f. To assist in mitigating visual impact, "Area 9" and "Area 7B," located on a copy of a topographic map labeled "Exhibit 1, Location of Potential Visual Screening Vegetation," have been identified as "no cut area" during operation of the disposal facility.
- Currently 87 people are employed by BMC with 41 g. employees dependent on Ruby Mountain operations.
- h. Finger Valley wetland, subject of a report entitled "Physical and Biological characteristics of the Finger Valley Wetland, " by William D. Countryman, dated December 20, 1991, will be retained undisturbed in its natural condition. The slimes pond, depending on its condition when it is reclaimed, may develop as a wetland through natural succession as shown on Figure 4.11 dated November 1993.
- i. As the disposal pile progresses uphill, additional diversion ditches will be constructed and the current east-west ditches will be modified to function as a seepage drainage. Additional finger drains will be installed per original specifications. Discharge from the wet tailing system is piped to Thirteenth Lake Brook.
- **j**. The leaking water reservoir is no longer used for water supply, but BMC has adapted to the limited supply and water withdrawal prohibition from Brown Pond Brook.

Flow data on Thirteenth Lake Brook is part of an ongoing monitoring program. BMC requests to permanently withdraw up to 68 gpm from Thirteenth Lake Brook.

## Project Site

- 9. The site of the single tailing facility overlays and expands the original authorized and commenced Tailings Valley area. A comparison of the area of disturbance is shown on Figure 4.1 dated November 1993. The expanded area has similar site characteristics. The topsoil stockpile is within 30 to 150 feet of an unnamed stream.
- 10. In a letter dated January 6, 1994, the DEC indicated that their mining permit will have to be modified by submitting APA approved and updated reclamation narrative and maps.
- 11. The 1992 Countryman report on Finger Valley Wetland states that it is a typical northern forested wetland with limited biological communities and physical extent, and is a relatively undisturbed natural ecosystem that is neither diverse nor complex. No unusual or rare species wore found.
- 12. Brown Pond Brook is still an important cold water brook trout fishery per DEC fisheries personnel, including a spawning and nursery area for native trout, aquatic insects and source of cool water during critical summer low flows. The existing 26.6 ft. by 1.8 ft. dam on the brook creates a small water pool and traps sediments; the tree cover and very short water retention time prevents any significant water temperature increases. The water from Thirteenth Brook is pumped to the modified drop box at the Brown Pond Brook dam which is sealed to prevent water withdrawals from the brook.

#### Project Impacts

- 13. Agency staff review of the "Wetland Mitigation Plan for Barton Mine Site Finger Valley Wetland," by Southern Tier Consulting, Inc., dated March 6, 1992, found substantive concerns and problems with the design, construction, monitoring and maintenance of a proposed replacement wetland stated in a letter dated December 24, 1992. Avoiding any disturbance to the existing Finger Valley wetland will preserve the values and functions of this wetland, including seasonal food sources for members of the surrounding forest community, maintain natural ground and surface water quality, and provide a seed source for the eventual Tailings Valley slimes pond area. Further compliance with Condition 13 of Permit 87-39 is no longer necessary.
- 14. The single failing facility will have a final height of 2,275 ft. msl, which is 45 ft. lower that the two piles originally authorized. As a result, based on an updated

visual analysis, three of the seven visible receptor sites will not be visible or will be screened vegetationally. There will be a slight increase in the number of acres where the piles will not be visible. There will be an increased duration of visibility due to the lengthened life of the facility and uncertainty of phased reclamation. The applicants' effort to begin disposal and earlier reclamation and test plots in the more visible areas will enhance mitigation. Limiting vegetation or timber harvesting on intervening treed areas between the tailing area and visual impact receptor areas during operations is a good interim mitigative measure.

- 15. The mine operation and its employment and economic benefits are dependent upon economical disposal of tailings. The significant lengthening of the life of the tailing pile and concomitant reduction in operating expenses provides a positive employment and local economy benefit.
- 16. The elimination of the tailing pile and operations in Finger Valley significantly increases the undisturbed buffer to the adjoining State Wilderness area.
- 17. A public notice of the permit amendment request was sent to adjoining property owners. One telephone call concerning water quality in Thirteenth Lake Brook was received, however, BMC reports realized by a DEC permit indicates compliance with established water quality standards. One letter expressing no objection to the amendment request and support for the applicant was received.
- 18. Maintaining an undisturbed soil and vegetation buffer with properly installed erosion control is important to protecting the water quality of the unnamed stream immediately south of the topsoil stockpile area. Timely implementation and regular maintenance of the erosion control measures are important preventative measures.
- 19. Implementation of test vegetation plots will enhance prompt and successful reclamation when operations permit. Research and design of the test plot, including details on soil amendments, fertilizing and plant species will help ensure prompt and successful revegetation of the tailings to control erosion and mitigate the visual impact of the 73 acre tailing pile.
- 20. Considering the environmental and economic benefits and no public opposition of the amended tailing pile, the permit amendment request has been deemed a non-material change pursuant to 9 NYCRR 572.19.

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The requested amendments are minor amendments within Section 809(8)(b)(1) of the Adirondack Park Agency Act in that they do not involve a material change in permit conditions, applicable law, environmental conditions or technology since the issuance of Permit 87-39.

21. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing \$14.09 of the New York State Historic Preservation Act of 1980.

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22. Continuing the prohibition of water withdrawals from Brown Pond Brook will maintain this valued aquatic ecosystem with limited natural flows. DEC fisheries personnel have not observed adverse impacts from limited water withdrawal from Thirteenth Brook to date, however, sedimentation in Brown Pond Brook and Thirteenth Lake Brook is a continuing concern. Retaining the existing dam at Brown Pond Brook as a component of the erosion and sedimentation control plan can help mitigate impacts to their value aquatic resource and its associated wetlands.

## CONCLUSIONS OF LAW

If undertaken in compliance with the conditions herein:

- 1. The project would be consistent with the Land Use and Development Plan.
- 2. The project would be compatible with the character description and purposes, policies and objectives of the land use area wherein it is proposed to be located.
- 3. The project would be consistent with the overall intensity guidelines for the land use area involved.
- 4. The project would comply with the shoreline restrictions.
- 5. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom.
- 6. The Agency has considered the public policy of the State set forth in ECL 24-0103, the statement of legislative findings set forth in ECL 24-0105, and the effect of the project upon the public health and welfare, fishing, flood, hurricane and storm dangers, and the protection and enhancement of the several wetland functions and benefits.

#### CONDITIONS

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- The project shall be undertaken as described in the application and Findings of Fact herein, and in compliance with the Conditions herein. Failure to comply with the application, Findings of Fact or Conditions voids the permit. In the case of conflict, the Conditions control.
- 2. No construction of buildings, subdivision of land, or other "land use or development" as defined in \$802(28) of the Adirondack Park Agency Act, not expressly authorized by this permit shall be undertaken without an additional Agency permit, amended permit, or letter of nonjurisdiction pursuant to 9 NYCRR Part 571.
- 3. This project may not be undertaken until this permit is recorded in the Warren County Clerk's Office. This permit shall be void unless so recorded by September 26, 1994, in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the date of recordation. The applicant shall ensure that all landowners' names are included on the first page of this permit.
- 4. This permit is binding on the applicant, any person undertaking the project, and all present and future owners of any part of the project site. If the amended project is not substantially commenced within two years of the date the permit is recorded, it may not be undertaken or continued unless a new or renewed permit is issued.
- 5. Copies of this amended permit and Permits 87-39 and 87-39A shall be furnished by the applicant to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permits 87-39, 97-39A and 87-39B issued July 28, 1994, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
- 6. All conditions of Permit 87-39 regarding erosion control (5, 6) and water withdrawal (8, 11) shall be adhered to, except as amended by the findings of fact and conditions herein.

The dam at Brown Pond Brook shall be maintained as a supplemental sedimentation basin. The pool created by the dam shall be periodically cleaned of trapped sediment, as needed, during low flows, using the existing cleared access. Prior to dredging, a temporary flow diversion dam and pipe(s) shall be installed to maintain natural flow of clean water. Existing vegetation within 35 feet of the impoundment area shall be preserved.

- Beginning in the 1994 operating season, deposition of tailings shall be as described in Finding of Fact 8c and revised Figure 4.3, to promote earlier reclamation of the pile most visible by off-site receptors. By March 31, 1995, the research and proposed test revegetation program shall be submitted for the 0.9 acre test area for Agency review and approval. The test revegetation program shall include design and layout of test plots; details on site preparation, soil amendments, and fertilizing; plant species and planting density including some tree seeds or seedlings; and evaluation methods. The plant species shall be indigenous species and analysis of proposed soil amendments shall ensure that groundwater and surface water quality shall be maintained and at a minimum, shall not exceed established DEC standards. The approved test reclamation program shall be implemented in the spring of 1996. Based on deposition progress and successful reclamation test(s), the final reclamation process shall be implemented in phases to the extent possible.
- 8. Temporary and permanent erosion control measures shall be timely implemented and maintained for the topsoil stockpile area. A minimum 35 ft. undisturbed and uncut vegetation buffer shall be maintained between the unnamed stream and the southerly limits of the stockpile.
- Prior to any timber harvest operations south of the Tailings 9. Valley facility on BMC leased land, the "no cut areas" described in Finding of Fact 8f shall be marked in the field. This "no cut area" is intended to provide natural screening to minimize off-site visual impacts. The applicant or any successors in interest can seek to modify any portion of this "no cut area" for good cause shown, including but not limited to, inapplicability due to implementation of phased reclamation areas, harvesting requirements which would otherwise impede other critical mining operations, and changes or alterations in operational plans which render such screening of no effect. In any event, this "no cut area" shall no longer be operative effective October 1 of the year following written certification by the Adirondack Park Agency that the subject reclamation plan has been successfully implemented.

Timber harvesting activities shall comply with Agency jurisdiction, application and standards in 9 NYCRR 573.7.

10. No "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part \$26) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of, clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

7.

- 11. Any new on-site sewage disposal system installed on the project site shall comply with New York State Department of Health's "Wastewater Treatment Standards for Individual Household Systems" (10 NYCRR Appendix 75-A) and with Agency standards in 9 NYCRR Appendix Q-4. Additionally, no new conventional on-site sewage disposal system shall be installed on existing slopes in excess of 15%, nor located within 100 ft. of any water supplies, bodies of water, wetlands and permanent or intermittent streams.
- 12. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.
- 13. At the request of the Agency, the applicant shall report in writing the status of the project including details of compliance with any terms and conditions of this permit.
- 14. Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

THIS PERMIT SHALL EXPIRE WITHIN SIXTY DAYS OF THE DATE OF ISSUANCE UNLESS THE ORIGINAL PERMIT IS DULY RECORDED IN THE OFFICE OF THE CLERK (F WARREN COUNTY IN THE NAME(S) OF THE OWNER(S) OF RECORD OF LAND AT THE TIME OF RECORDATION. IN ORDER FOR THE PERMIT TO BE RECORDED IN THE COUNTY CLERK'S OFFICE. THE APPLICANT MUST PAY THE COUNTY CLERK THE FOLLOWING FEES AT THE TIME OF RECORDING: TEN DOLLARS. AND IN ADDITION THERETO. THREE DOLLARS FOR EACH PAGE OR PORTION OF A PAGE OF THE PERMIT AND ANY ATTACHMENTS TO T. THE ORIGINAL OF THE PERMIT WILL BE RETURNED TO THE AFPLICANT BY THE COUNTY CLERK.

PERMIT issued this 38<sup>th</sup> day of ...., 1994.

ADIRONDACK PARK AGENCY

BY: William J. Curran

Director of Regulatory Programs

STATE OF NEW YORK) : ss: County of Essex )

On this find day of find, , 1994, before me, the subscriber, personally appeared William J. Curran, to me personally known and known to me to be the same person described in and who executed the within instrument, and he acknowledged to me that he executed the same.

Colad & Tierry Notary Public

RDJ:tal

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RICHARD R. TERRY Notary Public, Cinto of New York Cuplified in Eccor County No. 4697031 Commission Engines Cen. 31, 15 C/