

A TownOfUlsterCitizens.org Summary:
NYS Supreme Court Stipulation and Consent Order
Petitioners: Tilcon New York, Inc. & Callanan Industries, Inc. (Callanan)
Respondents: Thomas Jorling, Commissioner, NYS Dept. Environ. Conserv. (DEC)
July 8, 1995

Callanan initiated the Article 78 proceeding against the DEC on October 23, 1987 for the state's refusal to renew Callanan's Mined Land Permits filed in April of 1984 and 1987. Callanan claimed that the Mined Land Reclamation Law (MLRL) and the NYS Environmental Conservation Law (ECL, Article 23 Title 27) excluded their operations from the State Environmental Quality Review Act (SEQRA).

On February 5, 1988, the Article 78 was marked off the Supreme Court calendar by Stipulation Stipulation because Callanan and the DEC agreed to settle this litigation known as "Hudson Cement Quarry." The agreement consisted of:

- An updated Mined Land Use Plan consisting of 350 acres of which 94 acres are considered set-back acres that will not be mined. The net 256 acres are to be considered the mining operations over the life of the mine and permitted under MLRL prior to the effective date of SEQRA.
- All 350 acres are excluded from SEQRA review per ECL 8.0111(5)(a).¹ This section of NYS law addresses exclusion on actions permitted prior to SEQRA's implementation on September 1, 1976. The agreement as well as ECL does not preclude future application of SEQRA under certain serious environmental circumstances or other legal pronouncements related to "un-grandfathering" exclusions from SEQRA.
- Callanan agreed to provide the DEC a reclamation bond of \$191,200.
- Both parties agreed that:
 - Mining within KE-3 and KE-7 wetlands are not covered or canceled by the terms of this Stipulation and Order; and
 - KE-3 and KE-7 cannot be mined without obtaining from DEC a freshwater wetland permit pursuant to Article 24 of the ECL also known as the "Freshwater Wetlands Act."² Freshwater wetlands means lands and waters of the state as shown on the freshwater wetlands map. **24-0501** encourages local governments and counties to adopt wetlands protection laws consonant with this section of the ECL;
 - Callanan must submit wetlands boundary maps;
 - Callanan must submit Mined Land-Use Plan which meets the specifications of NYS Code of Rules and Regulations, Part 422;³
 - Blasting vibrations must satisfy the U.S. Bureau of Mines RI 8507⁴ criteria on seismographic measurement; blasting must also be limited to weekdays (no holidays) between 10am and 5pm; and
 - Mining outside the 350 acres may be subject to SEQRA review.

¹ <https://codes.findlaw.com/ny/environmental-conservation-law/env-sect-8-0111.html>

² https://www.dec.ny.gov/docs/wildlife_pdf/wetart24b.pdf

³ [https://govt.westlaw.com/nycrr/Document/l4eaff87bcd1711dda432a117e6e0f345?viewType=FullText&originatioNContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/nycrr/Document/l4eaff87bcd1711dda432a117e6e0f345?viewType=FullText&originatioNContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1)

⁴ <https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf>