

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 2550

October 24, 2016

Katherine A. Fitzgerald
Hinman, Howard & Kattell
80 Exchange Street
P.O. Box 5250
Binghamton, NY 13902-5250

Re: Order on Consent
R4-2016-0524-100
Johnston & Rhodes Bluestone Co.

Dear Ms. Fitzgerald:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$10,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: K. O'Connor

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Violation of
Article 17 of the Environmental Conservation
Law and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR) Part 750

**ORDER ON
CONSENT**

DEC Case
R4-2016-0524-100

By

Johnston & Rhodes Bluestone Co.,

Respondent.

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WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (“DEC” or “Department”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-0301 of the Environmental Conservation Law (“ECL”). In particular, DEC is and has been responsible for the protection of water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), Part 750, et seq.

2. ECL §17-0501(1) states that “It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.”

3. ECL §17-0511 states that “The use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.”

4. ECL §17-0701(1)(a) states that “It shall be unlawful for any person . . . to . . . Make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state”

5. 6 NYCRR Part 703.2 states the turbidity standard for a Class C stream to be “No increase that will cause a substantial visible contrast to natural conditions.”

6. 6 NYCRR Subpart 750-1.4(a) states that “no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by” its Permit.
7. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.
8. 6 NYCRR Subpart 750-2.8(a)(2) states that the “permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit.”
9. The SPDES Permit, at Final Effluent Limitations & Monitoring Requirements, states that “discharges from the permitted facility shall be limited and monitored by the permittee as specified below” with the requirement that 001 (process wastewater) be monitored for flow, suspended solids, and pH on a monthly basis and monitored for settleable solids on a weekly basis.
10. The SPDES Permit states at Monitoring Recording and Reporting (b) that “The monitoring information required by this permit shall be summarized, signed and retained for a period of three years from the date of sampling for subsequent inspection by the Department or its designated agent.”

RESPONDENT

11. Respondent, Johnston & Rhodes Bluestone Co., owns and operates a wastewater treatment plant (“WWTP”) located at 1 Bridge Street, East Branch, New York 13756 (Delaware County)(“Facility”) that operates pursuant to a State Pollution Discharge Elimination System (“SPDES”) permit #NY-0104256 (hereinafter “SPDES Permit”).
12. The SPDES Permit was effective on April 1, 1987 and remains in effect at all relevant times herein.
13. The SPDES Permit authorizes the use of three settling ponds as part of Respondent’s disposal facility which are utilized to achieve compliance with the SPDES Permit.
14. The WWTP discharges through Outfall 001 to an unnamed tributary, a Class D stream, (“Stream”) which flows to the East Branch of the Delaware River, a Class C(T) river (“River”).

INSPECTION

15. On August 12, 2015, Department staff conducted an inspection of the Facility. Violations of the ECL and 6 NYCRR were noted. Department staff sent Respondent a Notice of Violation dated September 21, 2015.

FIRST VIOLATION
Turbidity

16. During the August 12, 2015 inspection, Department staff observed a visible contrast to natural conditions in the Stream and River.
17. The visible contrasts were the result of discharges from the permitted settlement ponds and the unpermitted settlement ponds into the Stream and River.
18. Respondent's wastewater treatment discharges resulting in turbidity, a visible contrast to natural conditions, into the Stream and River are violations of ECL §17-0501(1), 6 NYCRR Part 750-1.4(a), and 6 NYCRR Part 703.2.

SECOND VIOLATION
Wastewater Discharges From Unpermitted Settlement Ponds

19. During the August 12, 2015 inspection, Department staff observed that Respondent constructed five new settlement ponds that were not included in its SPDES Permit. The unpermitted settlement ponds discharge to the Stream and River
20. Respondent's discharges from the unpermitted settlement ponds were not in compliance with all standards, criteria, limitations, rules and regulations resulting in the discharge of pollutants in a manner other than as prescribed by the SPDES Permit and are therefore violations of ECL §17-0511, ECL §17-0701(1)(a), and 6 NYCRR Subpart 750-1.4(a).

THIRD VIOLATION
Monitoring Requirements

21. During the August 12, 2015 inspection, Department staff determined that no sampling of the effluent from Outfall 001 has been conducted by Respondent.
22. Respondent's failure to conduct the monitoring as required by the SPDES Permit are violations of 6 NYCRR Subpart 750-2.5(a)(1) and the SPDES Permit.

FOURTH VIOLATION
Failure to Maintain WWTP

23. During the August 12, 2015 inspection, Department staff determined that Respondent's failure to maintain the three settling ponds, utilized as a part of Respondent's disposal facility, located near the Stone Mill caused these ponds to fill with solids. Rather than maintain these three ponds, Respondent created additional settling ponds which were also not maintained as they filled with solids.
24. Respondent's failure to properly maintain the permitted settlement ponds, which are installed or used by the permittee to achieve compliance with the conditions of the permit, are violations of 6 NYCRR Subpart 750-2.8(a)(2).

Civil Penalty

25. ECL §71-1929 provides for the following civil penalties: "A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

26. **Waiver of Hearing.** Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** In respect to the Order's violations, a civil penalty for TWENTY TWO THOUSAND AND EIGHTY DOLLARS (\$22,080) of which TEN THOUSAND DOLLARS (\$10,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department. TWELVE THOUSAND EIGHTY DOLLARS (\$12,080) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VII. **Modification.** The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. Review of Submitted Documentation. 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Third Parties.** This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

XIV. **Communications.** Communications shall be sent to

For Department:

Regional Water Engineer
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

Peter Johnson
Johnson & Rhodes Bluestone Company
34 Bridge Street
East Branch, New York 13756

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: October 24,
~~November 14~~, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order on Consent, Respondent shall have all solids removed from all settling ponds at the Facility. Respondent shall submit documentation demonstrating that all solids have been removed from all settling ponds at the Facility to Department staff within 14 days of the effective date of this Order on Consent.
2. Within 90 days of the effective date of this Order on Consent, Respondent shall submit to Department staff an engineering report prepared by a New York State licensed professional engineer evaluating all process wastewater, sanitary wastewater, and stormwater treatment units and outfalls in relation to the existing SPDES Permit requirements ("Report"). The report shall include, at a minimum, the following:
 - a. a description of all operations on site;
 - b. a map of site operations, including the location of all process wastewater, sanitary wastewater, and stormwater treatment units and outfalls;
 - c. a summary of water usage on-site, in particular the saw buildings;
 - d. an evaluation of existing wastewater treatment units and additional treatment needs;
 - e. a stormwater plan to manage site runoff and prevent it from entering process wastewater and sanitary wastewater treatment units;
 - f. Operation & Maintenance (O&M) schedules for all treatment units and erosion control measures (as needed); and
 - g. a schedule setting forth a timeline for implementation of all recommendations, stormwater plan actions, and O&M schedules set forth in the Report which shall require implementation no later than 120 days from the effective date of the Order on Consent.
3. Within 90 days of the effective date of this Order on Consent, Respondent shall submit to Department staff a SPDES Permit Application Form NY-2C, which includes all process wastewater, sanitary wastewater, and stormwater treatment units and outfalls.
4. Within 120 days from the effective date of this Order on Consent, Respondent shall implement the schedules set forth in the Report pursuant to Paragraph 2(g) above.