

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 23 and Part 422
of Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York ("6 NYCRR"),

**MODIFICATION OF
ORDER ON CONSENT**

- by -

File No. R4-2007-1105-188M1

Johnston & Rhodes Bluestone Company

Respondent

WHEREAS:

1. The Department has jurisdiction pursuant to ECL Article 23 to regulate surface mining and reclamation.
2. Respondent was issued a Mining Permit ("permit") on November 10, 1999 that expired on November 10, 2004 for the operation of the Kerryville-Mason Quarry, located off Butra Hollow Road, Hancock, New York ("mine").
3. Respondent is subject to Order on Consent R4-2007-1105-188 (effective on March 3, 2008) ("Order"). The Order contained a Schedule of Compliance which required the mine to be fully reclaimed by June 30, 2008.
4. On June 23, 2009, Department staff conducted an inspection of the site and observed that Respondent had not reclaimed the mine.
5. Respondent's failure to reclaim the mine is a violation of Order on Consent R4-2007-1105-188, ECL Section 23-2713(2) and 6 NYCRR 422.3(e).
6. ECL Section 71-1307(1) provides that any person who violates any provision of Article 23 of the ECL or commits any offense described in Section 71-1305 of this title shall be liable to the people of this state for a civil penalty not to exceed five thousand dollars (\$5,000) and an additional penalty of one thousand dollars (\$1,000) for each day during which such violation continues.
7. Respondent has affirmatively waived their right to a hearing in the manner provided by law and has consented to the issuing of this Modification and has agreed to be bound by the terms, provisions, and conditions contained herein.

NOW, being duly advised and having considered this matter, IT IS HEREBY ORDERED THAT:

I. In respect of the aforesaid violation, a civil penalty in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) is hereby assessed against the Respondent. SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) of the civil penalty is due in accordance with the following schedule:

1. \$2,500 with the return of the signed and notarized copy of this Modification,
2. \$2,500 by November 30, 2009 and
3. \$2,500 by December 31, 2009.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Modification in a timely fashion. In the event that Respondent fails to comply with the requirements of this Modification the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Modification by Respondent.

II. Respondent shall comply with the Schedule of Compliance set forth in this Modification, which is incorporated and made part of the terms, provisions, and conditions of this Modification and which supercedes any Schedule of Compliance set forth in the Orders.

III. The effective date of this Modification shall be the date it is signed by the Department.

IV. All terms, provisions, and conditions of the Order remains in effect unless expressly modified in this Modification.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Modification, waives their rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Johnston & Rhodes Bluestone Company

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 200__, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____,
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of _____

SCHEDULE OF COMPLIANCE

1. Prior to July 31, 2009, the entire Life of Mine must be reclaimed to the standards set forth in the previously approved Mined Land Use Plan.
2. Within 10 days of the completion of final reclamation of the entire mine, Respondent shall contact Region 4 Mined Land Reclamation staff to schedule an inspection of the completed reclamation work.