

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3689

April 13, 2015

Ms. Rosemary Stack, Esq.
Stack Law Office
Winkworth Professional Building
2700 Bellevue Avenue
Syracuse, NY 13219

Re: Order of Consent
Sonny & Sons Stone Co., LLC
R4-2014-1024-159

Dear Ms. Stack:

Enclosed please find a copy of the fully executed Order on Consent referenced above. This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

By this letter, Department Staff withdraw the Notice of Hearing and Compliant in the above captioned matter.

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff
P. Evans
M. Ellis



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of the
Environmental Conservation Law ("ECL")
Article 23, Title 27

ORDER ON CONSENT

File No. R4-2014-1024-159

- by -

Sonny & Sons Stone Company, LLC
13141 State Highway 30
Downsville, NY 13755

Respondent

WHEREAS:

1. The Department has jurisdiction pursuant to ECL Section 23-2711-12-a to approve Bluestone Exploration of one acre or less under a Bluestone Exploration Authorization Application. ("Authorization").

2. Respondent, Sonny & Sons Company, LLC, had its Authorization approved on March 21, 2012 for a period from March 22, 2012 to March 21, 2013 for a one acre area of land located on Sands Creek Road on lands owned by James M. Hutton located in the Town of Downsville ('site'). A true and accurate copy of the Authorization is found in Attachment 1.

3. ECL Section 23-2711-12-a (e) provides that: "The person engaged in bluestone mining exploration shall complete reclamation, in accordance with requirements set forth by the department, no later than one year from the date of authorization by the department unless the person engaged in mining obtains a renewal of the authorization or a permit pursuant to this title".

4. ECL Section 23-2711-12-a (a) provides that: "Bluestone to be removed from the site may not exceed five hundred tons in twelve successive calendar months and any overburden shall remain on the one acre site at all times".

5. ECL Section 23-2705(10) defines "overburden" to mean "all of the earth, vegetation and other materials which lie above or alongside a mineral deposit".

Violations

6. On October 8, 2014, Department staff inspected the site (“inspection”) and observed only a small pile of rubble piled against the high wall. The pile of rubble is not reclamation as required by the authorization.
7. Respondent violated ECL Section 23-2711-12-a (e) by failing to complete reclamation of the site by no later than March 21, 2013.
8. During the inspection, Department staff observed waste rock from the site placed in a meadow approximately 850 feet away to the northwest of the site.
9. Respondent violated ECL Section 23-2711-12-a (a) by placing the site’s waste rock offsite in the meadow.
10. Respondent alleges that it relied upon the assurances of a third party consultant that he had submitted a Small Scale Bluestone Mine Permit in a timely manner prior to the expiration of the Authorization. A Small Scale Bluestone Mine Permit application was submitted to the Department after Respondent was provided an Order on Consent with the cited violations.

Civil Penalty

11. 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 eight thousand dollars (\$8,000) and an additional penalty of two thousand dollars (\$2,000) for each day during which such violation continues.

Waiver of Hearing

12. Respondent has affirmatively waived its right to a hearing in the manner provided by law and has consented to the issuing of this Order on Consent 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:

Civil Penalty

I. In respect of the aforesaid violation, a civil penalty in the amount of TEN THOUSAND DOLLARS (\$10,000) is hereby assessed against the Respondent. TWO THOUSAND DOLLARS (\$2,000) of the civil penalty is due by bank check made payable to the "NYS DEC" and returned with the signed and notarized copy of this Order on Consent.

The balance of the penalty, EIGHT THOUSAND DOLLARS (\$8,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order on Consent in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order on Consent the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent.

Schedule of Compliance

II. Respondent shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent.

III. Communications¹

Department

All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention- Psalm Wyckoff, psalm.wyckoff@dec.ny.gov All communications shall include a reference to the Order on Consent Case Number R4-2015-0212-11.

Respondent

All communications required herein shall be made to: Respondent - Sonny & Sons Stone Company, LLC, 13141 State Highway 30, Downsville, NY 13755, Harry Triebe, Jr. All communications shall include a reference to the Order on Consent Case Number R4-2014-1024-159.

¹ The parties shall update the communication contact information as necessary.

IV. Access

The department, including its employees, agents and representatives shall have the right at all reasonable times during normal business hours on normal business days, and after proper notification to the Respondent and proper identification as department employees, agents and/or representatives, to enter and inspect any property or premises covered by a permit for the purpose of ascertaining compliance with title 27, the permit or this Subchapter. The Respondent shall provide a person to accompany the department's representative during an inspection of the permit area when notification is provided, be it written or verbal, at least 24 hours prior to such inspection.

V. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative 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 DEC, New York State, and their representatives and employees harmless for all claims, suits, 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.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

IX. Modification

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Settlement

This Order on Consent resolves the Respondent's liability for the violations addressed in this Order on Consent and that involved the Authorization.

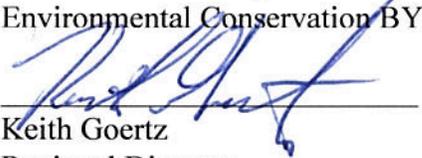
XIII. Termination of the Order on Consent

The Order on Consent shall terminate upon the Department's final approval of the reclamation of the site or issuance of a permit.

DATED: April 13, 2015

Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation BY:



Keith Goertz
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.

Sonny & Sons Stone Company, LLC

SIGNED: [Signature]

TITLE: Owner

DATE: 4/8/15

STATE OF New York)
) ss.:
COUNTY OF Delaware)

On the 8th day of April in the year 2015 before me, the undersigned, personally appeared Harry Triebe Jr,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at 13141 State Highway 30 Downsville, NY 13755
(Full mailing address)

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

of the Sonny and Sons Stone Co LLC,
(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 New York

[Signature: Janet Hadden]

JANET HADDEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6207102
Qualified in Delaware County
My Commission Expires June 08, 2017

SCHEDULE OF COMPLIANCE

Respondent shall by:

I) May 20, 2015 – Submit to the Department a complete application for a Small Scale Bluestone Mine Permit. The Respondent's former consultant has submitted an application for a Small Scale Bluestone Mine Permit to the Department which was reviewed and found to be incomplete and the consultant was notified.

The application materials shall include the following:

1. Standard Mining Permit Application
2. Organizational Report Form
3. Environmental Assessment Form for Mined Land Reclamation Projects
4. Full Environmental Assessment Form
5. Mined Land Use Plan narrative
6. Mining Plan Map²
7. Three reclamation cross sections²

II) June 30, 2015 if Respondent fails to comply with Paragraph I- use on and offsite spoil rock and overburden to back fill the excavation and place to minimize exposed rock faces. All ridges, peaks and slopes shall be left no steeper than 1V:2H. Vertical walls in competent bedrock are allowed. Remaining rock faces must not exceed 10 feet in height or must not

² The Mining Plan Map and Cross Sections shall be updated based on a current survey of the conditions of the mine, including the locations of the quarry faces, elevations of the crest and toe of the faces, elevation of the quarry floor and contours of the topography of the Life of Mine area and surrounds within 500 feet of the LOM boundary. The LOM boundary must be revised to incorporate all areas to be affected by mining, including the spoil piles that are currently located in the meadow. The Affected Area boundary must be revised to reflect current conditions. All comments provided in the NOIA dated November 8, 2012 must also be addressed.

exceed pre-existing rock face heights, according to the Authorization documents.³ The fertilization, seeding, and mulching of the site shall be completed.⁴

³ The overburden/topsoil shall be amended with sufficient organic material such that it can support plant growth and the cover material layer shall be a minimum depth of 6" on all recently graded areas and for all areas where vegetation is not acceptable (less than 75% coverage). The following Department recommendations are provided as guidance values and their implementation shall not be considered a defense to the failure of the site to be properly reclaimed: (1) pH testing; (2) fertilizing with a slow release nitrogen fertilizer at the rate of 300 pounds per acre; (3) conservation seeding mixture of at least 2 legumes (e.g., red clover, trefoil, etc.) at the rate of 80 pounds per acre; and (4) mulching the seeded area with hay mulch at the rate of 2,000 pounds per acre without bare spots.

⁴ Department staff, with notice to the Respondent, will inspect the site after Respondent completes the reclamation requirements and surrounding areas to determine if the reclamation and the Schedule of Compliance have been completed. The Department has the sole discretion to determine whether Respondent has met all reclamation requirements and has complied with the Schedule of Compliance.