

**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  
7016 0340 0000 4616 7847

December 5, 2016

John A. Robinson  
Beerston Stone Products  
15 Bridge St.  
Walton, NY 13856

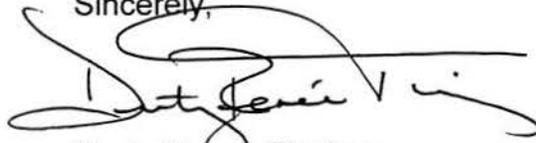
Re: Order on Consent  
R4-2015-1224-144

Dear Mr. Robinson:

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

This will also acknowledge receipt of \$1,200 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: P. Wyckoff



Department of  
Environmental  
Conservation

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

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In the Matter of Violations of  
Article 23 of the New York State  
Environmental Conservation Law and  
6 NYCRR Part 422

**ORDER ON CONSENT**

-by-

R4-2015-1224-144

Beerston Stone Products, Inc.  
State Route 10  
Walton, New York 13856,

Respondent.

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WHEREAS:

**JURISDICTION**

1. The Department of Environmental Conservation ("Department") is an agency of the State charged with jurisdiction over Mined Land Reclamation pursuant to Article 23 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereunder by 6 New York Code of Rules and Regulations ("6 NYCRR") Part 422.
2. Respondent, Beerston Stone Products, Inc., is the owner and/or operator of the Route 10 Gravel Bank located on NYS Route 10, in the Town of Walton, New York (Delaware County)("Facility").
3. Respondent is subject to a Mined Land Reclamation Permit (Permit #4-1256-00346/00001-00003) which was effective on September 9, 2005 ("Permit"). The Permit expired on September 9, 2010.
4. On August 18, 2010, the Department issued a Notice to Cease Mining Operations notifying the Respondent that mining operations must cease at the Facility as of September 9, 2010.
5. On September 9, 2010, an incomplete permit renewal application by the Department was received from Respondent.
6. As the Respondent did not submit the permit renewal application to the Department 30 days prior to expiration of the Permit, the Permit was not extended during the application review pursuant to the State Administrative Procedures Act ("SAPA").
7. Respondent signed an Order on Consent in Case No. R4-2010-0604-46 effective November 10, 2010 ("Order"). The Order required that Respondent submit a Stormwater Pollution Prevention Plan ("SWPPP").

8. On September 22, 2011, Respondent was granted emergency authorization to operate until October 31, 2011 to supply materials for repairs associated with August of 2011's Hurricane Irene and Tropical Storm Lee. As a condition of this authorization, Respondent was required to provide to the Department, by October 15, 2011, the SWPPP referenced in the Order.
9. Mining has not occurred at the Facility since October 31, 2011.
10. The Department notified Respondent by letter dated November 4, 2013 that the SWPPP required by the Order has not been received.
11. A Notice of Incomplete Application ("NOIA") dated March 6, 2015 was sent to Respondent requiring submittal of the SWPPP.
12. A Notice of Intent to Deny letter dated August 28, 2015 ("NOID") was sent by the Department to Respondent requiring a response from the Respondent to the NOIA by September 30, 2015. No response to the NOID or NOIA was received by the Department from Respondent.

#### **INSPECTIONS**

13. Inspections of the Facility were completed on October 24, 2012, September 4, 2013, August 14, 2014, and May 5, 2015.
14. By letter dated November 4, 2013, the Department notified Respondent that Respondent was in violation of the Order.
15. An inspection report was sent to the Respondent dated December 14, 2015 setting forth violations of the ECL and 6 NYCRR.

#### **FIRST VIOLATION**

16. Respondent failed to submit the SWPPP required by the Order.
17. Respondent's failure to submit the SWPPP required by the Order is a violation of the Order.

#### **SECOND VIOLATION**

18. ECL §72-1005 states that "Liability for fees authorized by this title shall be as follows: 1. for persons holding permits or approvals or subject to regulation under this title on January first in any year beginning with the year nineteen hundred ninety-one, liability for fees shall commence on January first; 2. for persons receiving new permits or approvals or subject to regulation under this title after September first, nineteen hundred ninety-one, liability for fees shall equal the annual fee established pursuant to this title and shall be prorated from the date of issuance; 3. for all persons holding permits or approvals, or subject to regulation under this title liability to pay annual fees shall continue until such time as reclamation has been completed and approved by the department and any required financial security has been released, and shall be prorated to the date of approval by the department."

19. Respondent failed to pay the regulatory fees associated with the Permit for the years 2013, 2014, and 2015.
20. Respondent's failure to pay the regulatory fees associated with the Permit for the years 2013, 2014, and 2015 is a violation of ECL §72-1005.

### **THIRD AND FOURTH VIOLATIONS**

21. ECL §71-1305(3) states that "It shall be unlawful for any person to abandon a mine without the approval of the department before all affected land has been reclaimed. A mine shall be considered as abandoned when mining and reclamation activities shall cease on land affected by mining without prior notification to the department or without describing such cessation in a mined land use plan approved by the department."
22. ECL §23-2713(2) states that "The reclamation of all affected land shall be completed in accordance with the schedule contained in the approved mined land-use plan pertaining thereto. The schedule, where possible, shall provide for orderly, continuing reclamation concurrent with mining. The permittee shall submit to the department a notice of termination of mining within thirty days after such termination. Reclamation of the affected land shall be completed within a two year period after mining is terminated, as determined by the department, unless the department deems it in the best interest of the people of the state to allow a longer period for reclamation. The permittee shall submit to the department a notice of completion of reclamation within thirty days of such completion. If the department fails to approve or disapprove the adequacy of reclamation within ninety days after receipt of the notice of completion of reclamation, the permittee may notify the department of such failure by means of certified mail return receipt requested addressed to the commissioner. If within thirty days after receipt of such notice, the department fails to mail a decision, the permittee shall be relieved of the obligation to maintain financial security in respect to reclamation; provided, however, nothing herein shall relieve the permittee of the obligation to accomplish adequate reclamation. The permittee shall file periodic reports at such times as the department shall require, indicating areas for which reclamation has been completed. The department shall inspect such areas and notify the permittee whether the reclamation is in accordance with the approved plan or whether there are deficiencies that must be corrected."
23. Respondent failed to notify the Department of termination of mining and has abandoned the Facility.
24. Respondent's failure to notify the Department of termination of mining is a violation of ECL §71-1305(3) and ECL §23-2713(2).
25. Respondent failed to completed reclamation of the Facility within two years after terminating mining, by October 31, 2013.
26. Respondent's failure to complete mine reclamation of the Facility within two years after terminating mining is a violation of ECL §71-1305(3) and ECL §23-2713(2).

## WAIVER

27. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and it agrees to be bound by the terms, provisions and conditions contained herein.

## CIVIL PENALTY

28. ECL Section 71-1307(1) states, "Any person who violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be liable to the people of the state for a civil penalty not to exceed eight thousand dollars and an additional penalty of two thousand dollars for each day during which such violation continues . . . ."

## REMEDIES

NOW, having considered this matter and being duly advised, it is ORDERED that:

- I. **Civil Penalty.** With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of SIX THOUSAND DOLLARS (\$6,000) of which ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200) 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. FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800) 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 and 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 advise, 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. **Communications.** Communications shall be sent to

For Department:

Psalm Wyckoff  
New York State Department of Environmental Conservation - Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

For Respondent:

John Robinson  
15 Bridge Street  
Walton, New York 13856

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

XIV. **Complaint.** This Order settles all violations set forth in the September 19, 2016 Complaint upon payment of the civil penalty and compliance with the Schedule of Compliance. The Notice of Hearing and Complaint in this matter shall be withdrawn as of the effective date of this Order.

DATED: Rotterdam, New York  
December 5, 2016

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

A handwritten signature in black ink, appearing to read "Keith Goertz", is written over a horizontal line.

Keith Goertz  
Regional Director  
Region 4



## **SCHEDULE OF COMPLIANCE**

1. Within 15 days of the effective date of the Order, Respondent shall pay to the Department all delinquent regulatory fees (2013, 2014, 2015, 2016). Respondent shall call Chris Manaco, MLRS – Central Office (518-402-8068), to obtain information on the amounts owed and where payment shall be sent.
  
2. Within 60 days of the effective date of the Order, Respondent shall submit to Department staff a Stormwater Pollution Prevention Plan (SWPPP) prepared and certified by a licensed or certified professional, which meets the requirements of the SPDES multi-sector general permit for stormwater discharges associated with Industrial Activity (GP-0-06-002).
  
3. Within 120 days of the effective date of the Order Respondent shall submit to the Department, a complete mining permit renewal application, including:
  - a. a Mining Permit Application;
  - b. a narrative letter describing:
    - i. mining operations during the last permit term, including a discussion of any departures from the approved mining plan;
    - ii. mining operations for the upcoming permit term, including a discussion of any proposed departures from the approved pans;
    - iii. whether or not the applicants have made, or plan to make, any substantive changes in the operation; and
    - iv. the number of cubic yards of topsoil needed to reclaim any affected acres and the number of available cubic yards of topsoil stockpiled on the site;
  - c. an updated Mining Plan Map which defines:
    - i. the total acreage previously reviewed and approved as part of the DEC's Life of Mine review;
    - ii. the currently affected acreage;
    - iii. areas to be affected in the coming permit term;
    - iv. any reclaimed areas (Department approved – or – areas undergoing reclamation);
    - v. the elevation of the current mine floor;
    - vi. location of active faces;
    - vii. location and volume of topsoil piles and berms stored in the mine;
    - viii. current drainage features: natural and constructed on or adjacent to the mine (within 50 ft of the Life of Mine boundary); and
    - ix. any buildings/features constructed at the mine.