

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 19 and
Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York ("6 NYCRR"),

ORDER ON CONSENT

File No.
R4-2010-0909-93

-By-

Cobleskill Stone Products, Inc.
RESPONDENT

WHEREAS:

Jurisdiction

1. The Department has jurisdiction in all matters pertaining to the control of air quality pursuant to ECL Article 19 and applicable regulations.
2. Respondent, Cobleskill Stone Products, Inc., owns and operates a mine known as the Schoharie Quarry located on Eastern Avenue in Schoharie, New York ("mine").
3. The mine has an Air State Facility Permit (4-4342-00001/00016 which was effective on June 25, 2004 ("air permit").
4. Condition No. 48.2 of the air permit requires that the mine shall suppress fugitive dust in accordance with the Fugitive Dust Control Plan.
5. The Drilling and Blasting Section of the Fugitive Dust Control Plan sets forth control methods. Control method (a) provides that the overburden will be removed as much as practical prior to drilling and blasting.

Facts

6. On August 31, 2010, Respondent's contractor performed a blast at the mine. The blast created a dust cloud due the failure to remove the proper amount of overburden and the dust cloud traveled beyond the mine's boundary
7. The failure to remove the proper amount of overburden prior to blasting is a violation of Respondent's Fugitive Dust Control Plan.

Civil Penalty

8. ECL 71-2103 provides that any person who violates any provision of Article 19 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty of not less than five hundred dollars nor more than eighteen thousand dollars for said violation and an additional penalty not to exceed fifteen thousand dollars for each day during which such violation continues and that such person may be enjoined from continuing such violation.

Waiver of Hearing

9. 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 agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violation, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is hereby assessed against the Respondent. FIVE HUNDRED DOLLARS (\$500) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, TWO THOUSAND DOLLARS (\$2,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order 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 violation of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of 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.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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.

V. 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.

VI. For the purpose of monitoring or determining compliance with this Order on Consent, the Department shall be provided access to the site in order to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

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

IX. This Order is deemed effective on the date signed by the Department.

X. 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 may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

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

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

D. 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. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and its successors (including successors in title) and assigns.

This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party and is in full settlement of the Notice of Hearing and Complaint.

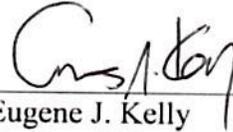
XIII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

XIV. The Notice of Hearing and Complaint in this matter shall be withdrawn as of the effective date of this Order and with prejudice upon compliance with the terms and conditions of this Order.

DATED: 5/13, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Respondent shall have a third party qualified person conduct an evaluation of the blasting procedures used, and the site conditions existing, during the August 31, 2010 blast and present recommendations to Respondent that can be implemented to minimize dust generated to the greatest extent practicable in future blasts. A copy of such recommendations, if any, shall be submitted to the Department. Such recommendations, if any, shall also be incorporated into Respondent's Fugitive Dust Control Plan for the mine.