

**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 5836

December 8, 2017

J. Griffin  
23973 State Highway 10  
Walton, NY 13856

Re: Order on Consent  
J&J Bluestone Corp.  
R4-2017-0911-242

Dear Mr. Griffin:

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

This will also acknowledge receipt of \$4,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher  
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  
Articles 17 and 23 of  
the New York State Environmental  
Conservation Law and Title 6 of the Official  
Compilation of the New York State Code of  
Rules and Regulations

**ORDER ON CONSENT**

-by-

R4-2017-0911-242

J&J Bluestone Corp.,

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 Title 27 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”).

**Respondent**

2. Respondent is a five- (5) acre bluestone mine known as J&J Bluestone mine #1, owned by Robert Giordano and Michael Lombardi, and located on Blanchard Road, Town of Hamden, New York, 13782, (“Mine”), at property Parcel 213.-1-23.1 of the Delaware County Tax Rolls.

3. Respondent was issued a Mined Land Reclamation permit for mining activities (#4-1234-00275/00001) for the Mine on July 2, 2009 which expired on July 1, 2014.

4. Thereafter, Respondent was issued a Mined Land Reclamation Permit for reclamation activities only (#4-1234-00275/00001) (“permit”), which became effective on September 1, 2015 and expired on August 31, 2017. This permit was issued on the Department’s initiative, to provide Respondent a window of opportunity with dates certain to complete the required mine reclamation process.

**Violation**

5. Respondent was required pursuant to 6 NYCRR 422.3(e), and by the terms of the permit, to complete the reclamation of the mine by no later than August 31, 2017.

6. Regulations at 6 NYCRR 422.3(e) require that “[t]he permittee shall reclaim all affected land within a two year period after mining ceases unless the department shall approve a longer period.”

7. Regulations at 6 NYCRR 422.3(d)(2)(i) require that “[a]ll refuse, spoil, unused mineral stockpiles and personal property shall either be removed from the permit area or utilized during reclamation of the affected land.”

8. Regulations at 6 NYCRR 422.(1)(vi)(d) provide that:

An acceptable vegetative cover shall be considered to be a permanent stand or a stand capable of regeneration and succession sufficient to assure 75 percent coverage of the areas planted if only ground cover (no trees) is utilized, or a 60 percent survival rate for shrubs and trees which are utilized, by the end of the second growing season after planting. If revegetation is not completely successful, the areas of failure must be randomly distributed, shall not exceed one-half acre in every two acres so treated and shall not endanger the success of revegetation in adjacent areas within the affected land.

9. Department staff inspected the Mine site and reclamation activities on November 15, 2014, June 24, 2015, September 22, 2016, April 24, 2017, and September 7, 2017, and observed a:

- failure to remove all stockpiles, junk, refuse, and debris;
- failure to fill in the quarry with spoil piles and grade the area to an acceptable 1V:2H slope; and
- failure to achieve an acceptable vegetative cover by the end of the second growing season.

10. Respondent’s failure to complete any reclamation of the Mine is an ongoing violation of 6 NYCRR 422.3(e).

### **Waiver**

11. 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**

12. 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 (\$8,000) and an additional penalty of two thousand dollars (\$2,000) for each day during which such violation continues . . . .”

### **Remedies**

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

I. **Civil Penalty.** With respect to the Order’s violations, a civil penalty in the amount of EIGHT THOUSAND DOLLARS (\$8,000) is assessed against the Respondent for the

above violations. FOUR THOUSAND DOLLARS (\$4,000) of the civil penalty shall be paid to the Department by company or bank check made payable to "NYS DEC" at the time this Order is signed, notarized, and returned to the Department. Payment of this portion of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order.

The balance of the penalty, FOUR THOUSAND DOLLARS (\$4,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order on Consent in a timely fashion. If Respondent fails to comply with said requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent.

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 under or controlled by it.

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 for the Department 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 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. **Communications.** Communications shall be sent to:

For Department:

New York State Department of Environmental Conservation  
Region 4  
Attn: Natural Resource Supervisor  
1130 North Westcott Road  
Schenectady, NY 12306

All submittals relating to the Mined Land Reclamation violation shall have the following information: owner's name, facility name and address, and the MLF identification number.

For Respondent:

Joel Griffin  
J&J Bluestone Corp.  
23973 State Highway 10  
Walton, New York 13856

DATED: Rotterdam, New York  
December 7, 2017

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Keith Goertz  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. By **May 1, 2018**, Respondent shall remove all equipment, stockpiles, and waste from the mine site.
2. By **May 15, 2018**, Respondent shall backfill all mined areas with spoil rock to the height of any quarry walls, compacted to remove voids, and graded with slopes no greater than 1V:2H.
  - a. Respondent shall contact the Department **within forty-eight (48) hours** of the completion of grading to schedule an inspection.
3. By **June 1, 2018**, Respondent shall cover all affected areas with fertile soil to a minimum depth of six (6) inches, with the exception of the access road to the site. Fertile soil shall be cast over the spoil pile that has been deposited on the natural hill slope below the mine site. The soil cast over the slope must cover all of the spoil on the hill slope.
  - a. Grading of slopes pursuant to item #2 above must be approved by the Department prior to application of fertile soil.
4. **Within forty-eight (48) hours** of the application of fertile soil, the following must be applied:
  - a. Seed with a conservation seeding mixture which contains at least two (2) legumes (e.g., red clover, trefoil, etc.), at the rate of eighty (80) pounds per acre;
  - b. Perform pH testing and lime as necessary;
  - c. Fertilize with a slow-release nitrogen fertilizer at the rate of three hundred (300) pounds per acre;
  - d. Apply hay mulch at the rate of two thousand (2,000) pounds per acre with no bare spots;
5. The Department shall conduct a reclamation inspection in the **summer of 2018**. In the event vegetation does not attain 75% coverage, the Department shall require Respondent to apply additional fertile soil, seed, fertilizer, and mulch.
6. Compliance with this Schedule shall not be a defense to subsequent violations.