

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
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8640

July 9, 2018

Peter B. Johnston, CEO
Johnston & Rhodes Bluestone Company
34 Bridge Street
East Branch, NY 13756

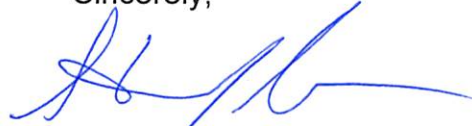
Re: Order on Consent
R4-2018-0531-137

Dear Mr. Johnston:

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: J. June
P. Wyckoff



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Article 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-

R4-2018-0531-137

Johnston & Rhodes Bluestone Company
34 Bridge Street
East Branch, NY 13756,

Respondent.

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”).
2. Respondent Johnston & Rhodes Bluestone Company, is the owner of a 13.8-acre bluestone mine known as “Shinhopple Quarry,” located near Amato Road in Delaware County, New York (“Mine”).
3. Respondent was issued a Mined Land Reclamation renewal permit for mining activities (#4-1224-00022/00001) for the Mine, effective June 21, 2016 and expiring on June 20, 2018.
4. Respondent is a person as defined by ECL §§ 23-0101(12).

VIOLATIONS

5. On February 14, 2016, Respondent’s Mining Permit (Permit #4-1224-00022/00001) expired.
6. On June 21, 2016, Respondent was issued Mined Land Reclamation Permit (the “Permit”) on Department staffs’ initiative, based on Respondent’s failure to timely submit a permit renewal application.
7. The Permit required Respondent to undertake certain reclamation activities, within a two-year period from its effective date of June 21, 2016, including:
 - a) Backfilling of the quarry area with spoil rock to the height of the existing high wall;

- b) Erecting a fence/barrier at least twenty (20) feet back from the edge of any cliff face that exceeds ten (10) feet in height;
 - c) Removing all equipment, refuse, and debris from the Mine site;
 - d) Achieving seventy-five percent (75%) vegetative cover of the Mine site;
8. On October 31, 2017, Department staff inspected the Mine site and observed that to date, Respondent had completed no reclamation work.
9. On November 1, 2017, Department staff issued Respondent a Mine Inspection Report relating the substance of Department staff's observations from the October 31 inspection and stating that any renewal application for Respondent's Mining Permit must be submitted by May 20, 2018.
10. On May 18, 2018, Respondent's consultant sent Department staff a letter on behalf of Respondent requesting an extension of the deadline to submit a complete permit renewal application until June 20, 2018.
11. Department staff denied the request to extend the deadline on the ground that the November 1, 2017 Inspection Report clearly set forth the May 20, 2018 deadline for the renewal application.
12. ECL § 23-2713(2) requires, in relevant part, that "[r]eclamation of the affected land shall be completed within a two year period after mining is terminated."
13. Regulation 6 NYCRR § 422.3(e) likewise requires that permittees "shall reclaim all affected land within a two year period after mining ceases unless the department shall approve a longer period."
14. Regulation 6 NYCRR § 422.3(d)(vi)(d) provides, in relevant part, that "[a]n 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."
15. Respondent's failure to timely reclaim all affected areas of the Mine site constitute ongoing violations of ECL § 23-2713(2), 6 NYCRR § 422.3(e), and 6 NYCRR § 422.3(d)(vi)(d).

Waiver of Hearing

16. 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

17. ECL § 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”

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

I. **Civil Penalty.** Respondent is assessed a civil penalty in the amount EIGHT THOUSAND DOLLARS (\$8,000). FIVE THOUSAND DOLLARS (\$5,000) of the civil penalty shall be paid to the Department by company or bank check made payable to “NYS Department of Environmental Conservation” 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, THREE THOUSAND DOLLARS (\$3,000), is suspended and shall not be payable, **provided that** Respondent fully complies with the requirements of this Order on Consent and its Schedule of Compliance in a timely fashion. If Respondent fails to comply with any such requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner’s name, facility name and address, contact name, 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 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, agents, successors or assigns.

VII. **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, such change to be made only upon written agreement of the parties.

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. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

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 for any other violations of the ECL, rules or regulations promulgated thereunder;

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, 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 Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed 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 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 initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal 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 submittal 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: Jami June
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:

Johnston & Rhodes Bluestone Company
Attn: Peter B. Johnston, CEO
34 Bridge Street
East Branch, NY 13756

DATED: Rotterdam, New York
July 9, 2018

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. **Within thirty (30) days of the effective date of this Order**, Respondent shall ***either*** submit a permit renewal application; ***or***, in the alternative, Respondent shall reclaim all areas affected by mining activity, per the reclamation schedule set forth at Paragraph 2 below.

NOTE: A permit renewal application will be treated as a new application, subject to SEQR requirements, including a public comment period.

2. If Respondent does not submit a timely permit renewal application, Respondent shall reclaim all areas of the Mine site affected by mining activity per the following schedule:
 - a. **By August 17, 2018**, Respondent shall remove all equipment, stockpiles, and waste from the Mine site.
 - b. **By September 1, 2018**, Respondent shall push all spoil rock up against the high wall, to be graded 1V:2H. Respondent must contact Mined Land Reclamation Staff ("MLRS") to schedule an inspection when grading is complete.
 - c. **By September 15, 2018**, Respondent shall spread fertile soil over all affected areas, and install a barrier or fence at least ten feet back from the edge of any vertical surfaces that exceed ten feet in height.
 - d. **Within forty-eight (48) hours** of applying soil, Respondent shall also:
 - i. Apply seed, in a conservation seeding mixture that contains at least two (2) legumes (e.g., red clover, trefoil, etc.), at the rate of eighty (80) pounds per acre;
 - ii. Apply fertilizer with a slow release nitrogen fertilizer at the rate of three hundred (300) pounds per acre; and
 - iii. Apply hay mulch at a rate of two thousand (2,000) pounds per acre, without bare spots.
 - iv. Perform pH testing and apply lime as necessary;
 - e. **During summer of 2019**, MLRS will conduct a reclamation inspection to check that vegetation has reached the regulatory requirement of seventy-five percent (75%) vegetative cover. If vegetation does not meet the required cover, MLRS will require Respondent to apply additional fertile soil, seed, fertilizer, and mulch.
3. Compliance with this Schedule shall not be a defense to subsequent violations.