

**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  
7017 1070 0001 0125 8930

September 10, 2018

Mr. Peter B. Johnston  
Johnston & Rhodes Bluestone Company  
1 Bridge Street  
East Branch, New York 13756

Re: Order on Consent  
R4-2017-1113-271

Dear Mr. Johnston:

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

This will also acknowledge receipt of \$1,800 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: P. Wyckoff  
J. June



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of the Environmental  
Conservation Law (“ECL”) Article 23,  
Title 27 and Part 422 of Title 6 of the Official  
Compilation of Codes, Rules and Regulations  
of the State of New York (“6 NYCRR”),

ORDER ON CONSENT  
File No. R4-2017-1113-271

- by -

Johnston & Rhodes Bluestone Company  
P.O. Box 130  
East Branch, NY 13756

Respondent  
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WHEREAS:

1. The Department has jurisdiction pursuant to ECL Article 23 to regulate surface mining and reclamation.
2. Respondent’s Mined Land Reclamation Permit, #4-1224-00249/00001 (“permit”) for a six acre bluestone mine, known as the Signor Quarry located on Baxter Mountain Road, Colchester, New York (“mine”), expires on January 15, 2020.
3. On April 21, 2016, October 31, 2017, and August 6, 2018, Department staff conducted inspections of the mine and reclamation activities and observed that mining activity has affected the area outside the Life of Mine boundary in the southwest portion of the site. A permit modification application was submitted in 2016 for the purpose of remediating this violation, however the Respondent failed to complete the application by responding to a Notice of Incomplete Application dated October 12, 2016.
4. Regulations at 6 NYCRR 422.1(a) provide that *“(a) Every applicant for a mining permit shall submit to the department a mined land-use plan which shall set forth in detail an outline of the mining property and the affected land, the applicant’s mining plan and the applicant’s reclamation plan. After the department has issued a mining permit, the permittee shall not deviate or depart from the mined land-use plan without approval by the department of an alteration or amendment thereto.”*
5. Special Condition #1 of Respondent’s permit requires conformance with plans, specifically that *“all activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant’s agent as part of the permit application.”*

6. Respondent's affectation of the area outside of the Life of Mine is a violation of Special Condition #1 of its permit and regulations at 6 NYCRR 422.1(a).

7. 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.

8. 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:**

I. Civil Penalty

Respondent is hereby assessed a civil penalty in the amount of ONE THOUSAND EIGHT HUNDRED DOLLARS (\$1,800) for the violations stated herein. The civil penalty shall be paid with the return of the signed and notarized Order. Payment shall be made by bank or certified check or money order made out to the Department of Environmental Conservation.

II. Schedule of Compliance

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. Communications

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.

IV. Respondent

All communications required herein shall be made to: Respondent - Johnston & Rhodes Bluestone Company, 1 Bridge Street P.O. Box 130, East Branch, NY 13756, Peter B. Johnston, pjohnston@citlink.net. All communications shall include a reference to the Order on Consent Case Number R4-2015-0212-11.

V. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order 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 or the ECL.

VI. 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.

VII. 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. Review of Submittals

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 accepts 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.

IX. 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.

X. 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.

XI. Entire Order

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

XII. Effective Date

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

XIII. Reservation of Rights

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.

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 officers, directors, 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 directors, officers, 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.

DATED: *September 10* 2018  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Acting Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Johnston & Rhodes Bluestone Company

Authorized Representative \_\_\_\_\_

SIGNED: *Peter B. Johnston Sr.*

TITLE: PRESIDENT

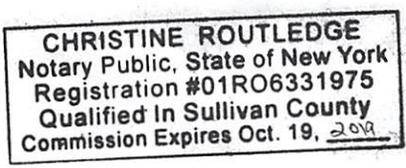
DATE: 9/5/18

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

On the 05<sup>th</sup> day of September in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared Peter B Johnston Sr. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Christine Routledge  
Notary Public

Qualified in the County of: Sullivan  
My Commission Expires: 10-19-19



## SCHEDULE OF COMPLIANCE

1. Respondent shall:

a. Reclaim the site by accomplishing the following:

1. By September 15, 2018, all spoil rock be pushed up into the excavation, compacted to remove voids, and graded with slopes no greater than 1V:2H.
2. By October 1, 2018, a minimum of 3 inches of fertile soil shall be spread over the area affected outside the Life of Mine. Fertile soil shall be cast over the entire backfilled area, including the toe of the backfilled slope.
3. Within 48 hours of the application of fertile soil, Respondent shall apply the following:
  - seed with a conservation seeding mixture that contains at least two legumes (ex. red clover, trefoil, etc.) at the rate of 80 pounds per acre,
  - perform pH testing and apply lime as necessary,
  - fertilize with a slow release nitrogen fertilizer at the rate of 300 pounds per acre, and
  - hay mulch at the rate of 2,000 pounds per acre without bare spots.

The vegetation must reach the regulatory requirement of 75% vegetative cover in the summer of 2019. If the vegetation does not meet the required cover by September 1, 2019, Respondent will undertake additional application(s) of fertile soil and seed, fertilizer, and mulch before October 1, 2019, as directed by the MLRS.

-OR-

- b. Within 60 days of the effective date of this Order, submit to the Department, a response to the October 12, 2016 Notice of Complete Application and complete the modification application process that adds the area affected, to the Life of Mine permitted area.