

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8534

July 17, 2018

Rosemary Stack, Esq.
Stack Law Office
3517 Amber Road
Syracuse, NY 13215

Re: Order on Consent
R4-2018-0522-132
Sonny & Sons Stone Company, LLC

Dear Ms. Stack:

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

This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: J. June
P. Wyckoff

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-

R4-2018-0522-132

Sonny & Sons Stone Company, LLC
13141 State Highway 30
Downsville, NY 13755,

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 Sonny & Sons Stone Company, LLC, is the owner of a 5.4 acre bluestone mine known as “Woodwise Quarry #1,” located on Sands Creek Road, County Route 67, in Hancock, New York (“Mine”).
3. Respondent was issued a Mined Land Reclamation renewal permit for mining activities (#4-1236-00709/00001) (the “Permit”) for the Mine, effective October 26, 2015 and expiring on October 25, 2020.
4. Respondent is a person as defined by ECL §§ 23-0101(12).

VIOLATIONS

5. On July 21, 2016, Department staff inspected the Mine site and observed a sediment basin constructed in the southeast portion of the Mine site that was possibly located outside the Life of Mine (“LOM”).
6. On July 21, 2016, Department staff further observed that mixed soil and rock had been placed outside the LOM in the northwest portion of the Mine site.
7. On August 8, 2016, Department staff sent Respondent an inspection letter requiring that Respondent move all spoil rock back into the LOM, reclaim all areas affected by the placement of the spoil rock outside the LOM, and place permit term markers around the sediment basin.

8. On May 15, 2018, Department staff again inspected the Mine site and observed that the spoil rock pile was not moved, and that no permit term markers were installed in the southeast portion of the Mine site.

9. During the May 15, 2018 inspection, Department staff took GPS coordinates of the spoil rock pile and the sediment basin.

10. During the May 15, 2018 inspection, Department staff also took GPS coordinates of an area to the north of the Mine site where mining activity was observed to have expanded since the 2016 inspection.

11. Upon analysis of the newly collected GPS data and 2013, 2016 and 2017 orthoimagery overlays, Department staff determined that the spoil rock pile and a portion of the sediment basin are located outside the LOM boundary.

12. Also upon analysis of the newly collected GPS data and orthoimagery overlays onto the 2015 Google Map data, Department staff concluded that Respondent had expanded mining activity beyond the LOM boundary in the northern portion of the Mine site as shown on the August 2015 mining plan map. Respondent contends that this constitutes a mapping error, that in-field GPS measurements were not used in preparing the August 2015 map, and that mining activity in the northern portion of the Mine site is within the 5.4-acre LOM per the LOM markers in the field. Respondent agrees to submit a modification application per the attached Schedule of Compliance to correct this.

13. ECL § 23-2713(1) requires that “[a]ll mining and reclamation activities on the affected land shall be conducted in accordance with an approved mined land-use plan.”

14. Regulation 6 NYCRR § 422.1(a) likewise requires that “[a]fter 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.”

15. ECL § 71-1305(2) states that it shall be unlawful for any person to violate “any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.”

16. Permit Special Condition No. 1 states, in relevant part, “All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application.”

17. Respondent’s activities outside the approved LOM constitute ongoing violations of ECL § 23-2713(1), 6 NYCRR § 422.1(a), and Permit Special Condition No.1.

Waiver of Hearing

18. 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

19. 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 of TWO THOUSAND DOLLARS (\$2,000), to 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.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance. 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. 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.

3(a). Respondent's modification application to be submitted pursuant to the Schedule of Compliance shall comply with the Uniform Procedure Act ("UPA") Regulations, 6 NYCRR Part 621, including § 621.4(i) governing applications under the Mined Land Reclamation Law ("MLRL"). The Department's review of Respondent's modification application will be conducted pursuant to the UPA and MLRL regulations.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department reasonably 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:

Sonny & Sons Stone Company, LLC
Attn: Harry Triebe
13141 State Highway 30
Downsville, NY 13755

XIII. Termination. The Order shall terminate upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: Rotterdam, New York
July 17, 2018

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
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.

Sonny & Sons Stone Company, LLC
Authorized Representative

SIGNED: Harry Triebel Jr

TITLE: Counsel Partner

DATE: 7/13/18

STATE OF NEW YORK)
COUNTY OF Delaware) ss.:
)

On the 13 day of July in the year 2018, before me, the undersigned,
personally appeared Harry Triebel Jr, personally known
(Full name)

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 s/he executed
the same in his/her capacity, and that by his/her signature on said instrument, the
individual, or the person upon behalf of which the individual acted, executed the
instrument.


Janet Hadden
Notary Public
Qualified in the County of: Delaware
My Commission Expires: 6/8/21

JANET HADDEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6207102
Qualified in Delaware County
My Commission Expires June 08, 2021

SCHEDULE OF COMPLIANCE

1. **Within ninety (90) days of the effective date of this Order**, Respondent shall **either** submit a permit modification application to include all affected areas outside the Life of Mine (“LOM”); **or**, in the alternative, Respondent shall reclaim all affected areas outside the LOM per the reclamation schedule set forth at Paragraph 3 below.
 - a. If Respondent submits a permit modification application to increase the LOM, then permit term markers delineating the **entire** LOM boundary must be installed **within 30 days of issuance of a modified permit**.
2. For any/all areas that must be reclaimed:
 - a. **By September 1, 2018**, Respondent shall push 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.
 - b. **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.
 - c. **Within forty-eight (48) hours** of applying soil, Respondent shall also apply fertilizer, lime, seed, and mulch as needed.
 - d. **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 as needed.
3. Compliance with this Schedule shall not be a defense to subsequent violations.