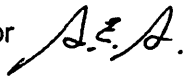


# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8  
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## MEMORANDUM

To: James T. McClymonds, Chief ALJ, Office of Hearings and Mediation

From: Scott E. Sheeley, Regional Permit Administrator 

Re: Request for Hearing on Frontier Stone, LLC Stone Quarry  
Town of Shelby, Orleans County  
Mined Land Reclamation and Water Withdrawal Permit Applications  
DEC Application ID #s 8-3436-00033/00001 & /00002

Date: December 21, 2015

Enclosed is a request (completed hearing referral form) to schedule an adjudicatory hearing on applications for Article 23, Mined Land Reclamation and Article 15, Water Withdrawal permit applications currently before the Department. The permit applications were filed by Frontier Stone, LLC for a new 215.5-acre stone quarry to be located on Fletcher Chapel Road and Sour Springs Road in the Town of Shelby, Orleans County.

On December 11, 2015 the Department notified the applicant of its determination to conduct an adjudicatory hearing on the application (copy enclosed). As noted in the hearing referral form, a prior legislative hearing was held April 30, 2014 on the Notice of Complete Application (pursuant to 6 NYCRR Part 621) and Acceptance of a Draft Environmental Impact Statement (pursuant to 6 NYCRR Part 617). ALJ Molly McBride provided her assistance at that time and presided over the legislative hearing.

Application file documents are currently being compiled and draft permits are being developed. These will be forwarded to the assigned ALJ and the applicant under separate cover as soon as they can be made available. As indicated in the hearing referral form, further contact regarding this matter may be directed to Dudley Loew at 585-226-5368.

Attachments – Hearing Referral Form & December 11, 2015 Letter

Ecc (all w/attachments):

Paul D'Amato, Regional Director  
Dennis Harkawik, Regional Attorney  
Dudley Loew, Office of General Counsel, Region 8  
Jack Nasca, Director, Division of Environmental Permits  
John Ferguson, Assistant Director, Division of Environmental Permits  
ALJ McBride, Office of Hearings & Mediation Services  
Steve Army, Division of Minerals, Region 8  
Scott Rodabaugh, Division of Water, Region 8  
Kevin Brown, Esq., Brown Sharlow Duke & Fogel, P.C.

New York State Department of Environmental Conservation  
Office of Hearings and Mediation Services

**PERMIT HEARING / MEDIATION REFERRAL**

DEC Project Number: 8-3436-00033/00001

Permit Hearing / Mediation Referral Type (check all that apply):

- Part 624 Permit Hearing Proceeding       Section 621.9 Settlement Conference  
 Part 621 Legislative Hearing only       Mediation  
 Other: [Click here to enter text.](#)

PLEASE NOTE: For hearing referrals, this form should be filled out by the appropriate program unit requesting that a hearing be held, signed by the Regional Attorney and the Regional Director, and then forwarded to the Office of Hearings and Mediation Services (OHMS), 625 Broadway, 1st Floor, Albany, New York 12233-1550. A copy of the filed application, index of documents that comprise the application, supporting documents, DEIS or Negative Declaration, as appropriate, and a copy of filed correspondence from the applicant and the public must also be forwarded to OHMS together with this form. Forward one copy of only this form to the appropriate Division Director.

For mediation referrals, consult regional policy concerning required approvals. For more information about the mediation process, please see <http://www.dec.ny.gov/regulations/2578.html>.

INSTRUCTIONS FOR USE: This is a form fillable in Word 2007. Before printing, enter text in every field that reads "Click here to enter text." If a field is not applicable, enter "n/a." To check a box, click on it.

1. Applicant's name, address, telephone number, and email address:  
Frontier Stone, LLC, 4172 E. Lake Road, Wilson, NY    David Mahar, President,    ph: 716-751-9670,  
e-mail: [mahartz43@aol.com](mailto:mahartz43@aol.com)

Representative's name, address, telephone number, and email address (if known):  
Kevin Brown, Esq., Brown Sharlow Duke & Fogel, PC, 621 West Genesee Street, Syracuse, NY  
ph: 315-399-4343, fax: 315-472-6215, e-mail: [kevin.brown@brownsharlowlaw.com](mailto:kevin.brown@brownsharlowlaw.com)

Project location (if different from applicant's address):  
Fletcher Chape and Sour Springs Road, Shelby, NY,    Town of Shelby, Orleans County

2. Brief description of the project:  
Proposed 215.5 +/- acre dolomite/limestone quarry with drilling, blasting and processing operations (crushing washing & screening). Mining is proposed below the water table with dewatering and discharge off-site. Proposed maximum dewatering capacity of 545,000 gallons per day. The reclamation objective will be to create open space with two lakes for recreation and/or wildlife habitat. When completed, the two lakes, separated by an existing utility line, would be approximately 35.2 and 156.1 +/- acres in size.

3a. Permits applied for (types, dates received, application numbers, project type, listing of all applicable sections of 6 NYCRR for the requested permits):  
Mined Land Reclamation, received 3/14/2006, App. No. 8-3436-00033/00001 (MLR No. 80823), New stone quarry, 6 NYCRR Parts 420-425

Water Withdrawal, received 6/14/2013, App. No. 8-3436-00033/00002, New water withdrawal for mine dewatering, 6 NYCRR Part 601

3b. Any other Departmental permits required (including discussion of any Departmental permits that are not part of this proceeding) or permits from other local, State, or federal agencies:

Will require coverage under the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities (GP-0-12-001), issued under the Department's regulations at 6 NYCRR Part 750

Will require registration under the Department's air pollution control regulations at 6 NYCRR Part 201

According to the Town of Shelby, the following local town approvals are required: zoning change (from agricultural/residential to industrial), site plan approval, and special use permit.

4a. SEQRA determination:

Type I Action (Identify all subdivisions of 6 NYCRR 617.4(b) that apply): (3) zoning change at applicant's request for action that exceeds another Type 1 threshold; (6)(i) non-residential project with physical alteration of 10 acres or more;

Unlisted Action

Type II Action (Identify all subdivisions of 6 NYCRR 617.5(c) that apply): [Click here to enter text.](#)

4b. Determination of Significance (for Type I and Unlisted Actions):

Positive Declaration

Negative Declaration

Conditioned Negative Declaration (if Unlisted)

Date of Determination: June 7, 2006

Lead Agency: NYS DEC

Coordinated Review

Uncoordinated Review

Date draft EIS accepted as adequate for public review: March 28, 2014

Coastal Zone status: Not applicable – outside coastal zone

5. Date application complete under the Uniform Procedures Act:

Date of completeness determination: March 28, 2014

Date deemed complete: [Click here to enter text.](#)

6. Date of notice of complete application published in the ENB and in newspaper (name and date), if applicable (if the notice of complete application is to be combined with the notice of hearing, so indicate):

A combined notice of complete application, notice of DEIS acceptance, and notice of SEQR hearing was published in the ENB on April 2, 2014 and in the Batavia Daily News on April 3, 2014. A Part 617 and Part 621 Legislative Hearing was held on April 30, 2014. Written comments on the complete applications and DEIS were accepted through June 9, 2014.

7. Permit/variance determination (check all that apply):

Approve

Approve with conditions

Deny

Department-initiated modification, suspension, or revocation

Other: [Click here to enter text.](#)

Brief summary of Department staff's determination (e.g., can all statutory criteria be met through imposing conditions of approval or by granting a variance; special problem areas) (attach additional pages as needed):

Department staff believe permits can be issued with conditions and draft permits are being prepared for purposes of the Part 624 proceeding. Draft permits will be made available as soon as possible to the OHMS and the applicant.

8. Summary of comments filed in response to the notice of complete application (summarize as to primary issues raised and their significance) (attach additional pages as needed):  
Numerous comments received in writing and verbally during legislative hearing. These raise concerns about impacts related to the Iroquois National Wildlife Refuge, the STAMP site (see below), groundwater, blasting, wildlife, traffic, land use compatibility, cultural resources, and overall quality of life.

9a. What attempts have been made to meet with the applicant to discuss DEC's or the public's comments, and what was the outcome?  
Several meetings have been held in 2014 and 2015 with the applicant to address public comments, with primary focus on comments received from the US Fish & Wildlife Service concerning the Iroquois National Wildlife Refuge and those received from Genesee County's economic development agency concerning the Science, Technology, and Advanced Manufacturing Park (STAMP) project. Staff believe the applicant has addressed the primary concerns of both parties and the draft permit that will be available will reflect the outcome of those meetings. In addition, staff have met with the applicant to further address potential groundwater impacts, resulting in a modification of the mine design to limit the extent of groundwater drawdown.

9b. Have DEC staff or the applicant considered mediation as an option to resolve one or more issues relating to this application?  Yes  No  
  
If no, why not? If yes, describe the outcome. Comments were received from numerous individuals and groups in the context of a DEIS. The number of commenters and range of issues raised do not lend themselves to mediation. In addition, the process still requires the preparation of a Final EIS in some fashion, which also does not lend itself to mediation.

10. Date applicant requested a hearing or date applicant was notified of DEC staff's determination to hold a hearing:  
December 11, 2015

11. Number of witnesses and subject areas of testimony to be presented by DEC staff (if known):  
Individuals are still to be determined, but will include staff from the following Divisions to address their areas of expertise: Minerals Resources, Water, Fish & Wildlife, and possibly Air Resources and Environmental Permits

12. Name and telephone number of the Regional contact person responsible for the coordination of hearings:  
Dudley Loew, Assistant Regional Attorney, 585-226-5368

PREPARED BY: Scott E. Sheeley  
Print Name: Scott E. Sheeley  
Title: Regional Permit Administrator  
Date: December 21, 2015

REVIEWED BY: [Signature] 12/21/2015  
Regional Attorney Signature/Date

APPROVED BY: Paul Damato 12/21/2015  
Regional Director Signature/Date