

Via E-Mail [scott.bassinson@dec.ny.gov]
and Regular Mail

D. Scott Bassinson
Administrative Law Judge
NYSDEC Office of Hearings and Mediation Services
1st Floor, 625 Broadway
Albany, New York 12233-1550

RE: Petition for Party Status
In the Matter of Frontier Stone, LLC
NYSDEC Permit Application ID Nos. 8-3436-00033/00001 and 00002

Dear Hon. Bassinson:

Enclosed please find a Petition for Party Status in connection with the referenced applications of Frontier Stone, LLC.

Very truly yours,

Wendi V. Pencille
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Ken Printup
Bigford Rd., Medina, NY 14103

Francis M. Domoy Ph.D.
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cc: w/ encs.:

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STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN THE MATTER OF THE APPLICATIONS OF
FRONTIER STONE, LLC Pursuant to the New York
State Environmental Conservation Law (ECL) Article 23
and Title 6 of the Official Compilation of Codes, Rules and
Regulations of the State of New York (6 N.Y.C.R.R) Parts
420 - 425; ECL Article 15 and 6 NYCRR Part 601; State
Pollutant Discharge Elimination System (SPDES) General
Permit for Stormwater Discharges Associated with Industrial
Activities (GP-0-12-001), Sector J and; 6 N.Y.C.R.R. Part 201.

**PETITION FOR
PARTY STATUS**

Project Application Nos. 8-3436-00033/00001 and 00002

INTRODUCTION

Pursuant to 6 N.Y.C.R.R 624.5(b), we hereby offer this petition for full party status in the above-captioned proceeding on behalf of the Citizens for Shelby Preservation ("CSP"), by myself as CSP's President, and on my own behalf in my individual capacity, and on behalf of CSP Vice President Kenneth Printup in his individual capacity and Francis M. Domoy Ph.D. as a member of CSP and on his own behalf as a farm land owner affected by this proposed project in his individual capacity. We offer this petition for the purpose of protecting the Iroquois National Wildlife Refuge (the "Refuge") from the significant adverse environmental, ecological and other impacts that would result from the mining, excavation, water withdrawal and other inherently incompatible industrial-scale activities proposed by Frontier Stone, LLC ("Frontier") in close proximity to the Refuge (the "Project").

**Identity And Environmental And Statutory Interests
(6 NYCRR § 624.5(b)(1)(i)-(iii))**

CSP is an unincorporated organization of concerned local residents and taxpayers with an interest in protecting the Refuge and surrounding area from the multiple threats presented by the Project. A list of CSP's members is included as Attachment 1. CSP's members live, raise their families, and own property in the area surrounding the Refuge and have used, enjoyed and fostered the rich scenic beauty, ecological diversity and outdoor recreational and educational opportunities offered by the Refuge for decades. All of CPS' members have a substantial interest in protecting the Refuge and the quality of their local environment from the numerous adverse impacts associated with the Project.

**Grounds For Opposition
(6 NYCRR § 624.5(b)(1)(v))**

The Refuge was established in 1958 and encompasses 10,828 acres of open water, emergent marsh, forested wetland, upland forest, grassland, and shrubland habitats. According to the September 2011 Iroquois National Wildlife Refuge Comprehensive Conservation Plan and Environmental Assessment prepared by the U.S. Fish & Wildlife Service (the "CCP"), the

Refuge, in combination with neighboring New York State Wildlife Management Areas, forms the 19,000-acre Tonawanda-Iroquois - Oak Orchard Wetland Complex, one of the largest contiguous blocks of natural habitat in western New York and includes some of the most productive inland wildlife habitat in the eastern United States. CCP p. 1-2. The CCP goes on to explain that over half of the Refuge is wetland (6,500 acres), which provide a variety of feeding, nesting, brood rearing, and resting habitats for migratory birds and resident wildlife. The interspersed open water and aquatic and emergent plant communities provide resting and feeding habitat for over 120,000 waterfowl annually. The Refuge was one of the first areas in New York designated as a National Audubon Society Important Bird Area. CCP p. 1-6. Refuge also serves as a critical nesting, feeding, resting, and staging area for migratory waterfowl. There are numerous habitats within the Refuge that support approximately 266 species of birds, 42 species of mammals, plus reptiles, fish, amphibians, and insects. Some of these include state-listed endangered and/or threatened species. Some or all of these species will be adversely and irreparably affected by industrial-scale mining activities in close proximity to their habitat.

The Refuge is open to the public and facilitates wildlife-dependent recreational opportunities including hunting, fishing, interpretation, environmental education, wildlife observation and photography. Total visitation to the refuge fluctuates year to year between 35,000 to 50,000 visits. CCP p. 1-8. CSP's members, Town residents and tourists routinely use the Refuge for recreation, hunting, fishing, bird-watching, and other nature-related activities. This Refuge is one of only ten wildlife refuges within the State of New York. As such, it is a unique, fragile environmental resource entitled to special protection. These recreational, educational and tourism activities, including those at the Jobs Center, would be adversely affected by the industrial activities associated with the Project including, but not limited to, blasting, water withdrawal and heavy truck traffic. These recreational and educational activities would be adversely affected by the activities comprising the Project including, but not limited to, noise, vibrations, dust and heavy truck traffic at and near locations used for the observation of wildlife and habitat.

The Project and the cumulative long-term impacts associated with it will transform this rural, tranquil, and environmentally sensitive area into an area degraded by industrialization, and forever mar the scenic beauty of the Refuge. Construction and operation of the Project over the next several decades will involve the continuous use of heavy machinery and equipment and result in significant noise, vibrations and particulate emissions which will negatively affect not only CSP members who live and recreate near the Refuge, but the unique and fragile wildlife that live and forage in this area as well. Frontier's proposed withdrawal of significant volumes of water from the local environment and discharges into the Refuge not only appears to be significantly understated as compared to comparable mining activities elsewhere, but also threatens to disrupt the critical wetland ecosystem in the Refuge and local water wells. In addition, members of CPS who live in the community around the proposed Project face increased threats to public safety and local roadway degradation due to the proposed heavy truck traffic associated with the Project.

The Project also has the potential to jeopardize the future growth and development of the science and technology park known as WNY STAMP which the Genesee County Economic Development Center is coordinating.

The grounds for opposition are explained in more particularity below, identifying the substantive and significant issues that qualify for adjudication.

**Issues For Adjudication And Offers Of Proof
(6 NYCRR §§ 624.4(c), 624.5(b)(2))**

A. The Project Would Cause Irreparable Harm to Wildlife and the Environment

1. The Project Would Threaten Endangered and Other Species

My activities and efforts as President of CSP and my advocacy on its behalf has been informed by nearly 30 years of experience as an NYSDEC and United State Fish & Wildlife-licensed wildlife rehabilitator. As such, I have first-hand knowledge of the activities and presence of various species at and near the Refuge including, among other things, the ongoing presence of short-eared owls and upland sandpipers, both endangered species. For nearly a decade, CSP Vice President Kenneth Printup and I have had extensive communication with NYSDEC personnel regarding this critical issue.

Unfortunately, Frontier's Vegetation and Wildlife Resources Report and Impact Analysis of Ecological Resources, attached as Appendix 6 to the DEIS (the "Report") fails to adequately address the significant adverse impacts to wildlife in and near the Refuge that would be caused by noise, dust and vibrations from blasting and other mining operations. For example, while the Report contains some analysis with respect to Henslow's Sparrow, the Report fails to adequately address impacts on the Short-Eared Owl or other threatened species known to nest or forage in and around the project area. The DEIS also fails to examine the Project's potential effects on other types of animals, such as bats or aquatic wildlife. Additional studies are needed to comprehensively determine the scope of the impact of the project on wildlife living both in and around the Refuge.

In fact, the unsupported assertions in Frontier's Report contradict NYSDEC's own past practice of placing prohibitions on proposed highway department activities of both the Town of Shelby and Orleans County in the vicinity of the Refuge and the proposed Project location due to NYSDEC's concerns about impacts to species known to be present in the area. In particular, we will present NYSDEC records and other information demonstrating that NYSDEC has imposed conditions intended to prevent disruption to the habitat of Short-Eared Owls and Upland Sandpipers. In view of the above, it is necessary and appropriate for NYSDEC to require independent studies to assess the potential impacts on such species caused by the comparatively more intrusive and ongoing blasting and other heavy industrial activities proposed by Frontier is a fatal defect in the SEQRA review process for the Project.

DEC's draft permit dated January 29, 2016 also fails to protect against potential adverse impacts to wildlife. For example, draft Condition 5 states that no mining activity shall be conducted within 25 feet of any property or right-of-way boundary. This setback distance may be increased based on the depth of the mine below the level of the adjacent property. Given many of the potential adverse side effects to wildlife identified in the DEIS, CPS finds that this setback is insufficient to protect of the adjacent property and established land use, particularly . the southernmost border of the proposed mine, which is roughly the northern border of the Refuge. Additional studies are necessary to determine whether even increased setbacks would be adequate to mitigate adverse impacts to the Refuge.

2. The Project Will Adversely Affect Hydrogeology, Surface Water Runoff, Drawdown and Water Quality

As noted above, the USGS has emphasized that the wetlands in the Refuge, including the Schoolhouse Marsh, are an important wildlife habitat. Unfortunately, the DEIS fails to adequately address the effect of the quarry's dewatering and quarry discharges on those wetlands. For example, assertions in the Hydrogeologic Report in the DEIS (Appendix 4) that "no impact to wetlands or waterbodies will occur on the site from the quarry development" appear to be based on visual observations alone. Given the unique and critical ecological role of the wetlands in and near the Refuge, additional study must be undertaken to assess, both qualitatively and quantitatively, the Project's potential drawdown effect on those areas. Specifically, Frontier should be required to fund an independent study or peer review of the conclusions reached in the Hydrogeologic Report.

The DEIS also indicates that quarry operations would vastly increase the amount of surface water flowing into the Refuge. Stormwater and water from quarry dewatering will accumulate sediment, dust and pollutants. These materials will be removed from the mine and discharged directly into the Refuge. CSP believes that potential sediment and other contamination in such discharges would present a significant adverse impact to the Refuge and that this issue requires qualitative and quantitative analysis.

CSP also believes that Frontier's estimate that the amount of water to be pumped from the proposed quarry into the refuge will be 554,000 gallons per day is significantly understated. The record is unclear as to the basis for this estimate, which should be closely assessed and compared to the water management activities of comparable mines utilizing this formation. For example, the Redland Quarries NY Inc. quarry in Niagara County (Permit #9-2930-00015-02002) reportedly pumps a maximum 2.88 million gallons per day.

The DEIS acknowledges that dewatering from the mine will result in a substantial increase in the amount of runoff to the wetlands within the Refuge. Significantly, however, DEC's Draft Permit Condition 12 fails to require groundwater quantity or quality monitoring within the Refuge. Given the unique and irreplaceable natural resources at stake, the CSP feels that approval for such discharge activities is inappropriate and incompatible with the Refuge ecosystem and should be prohibited. At minimum, however, NYSDEC should impose requirements for monitoring of discharge volumes and water quality, as well as the use of a third party monitor to ensure the adequacy of such testing.

In addition, DEC's Draft Permit Condition Condition 14 discusses mine dewatering alternatives. However, DEIS, does not appear to assess alternatives to draining that water into the Refuge. The "alternate" discharge route from the draft permit simply channels the mine runoff from one area of the Refuge to another. However, if the runoff is considered to be harmful to the habitats there, such discharges should be prohibited elsewhere within the Refuge.

B. The Project Would Cause Irreparable Harm to Recreational and Educational Activities at and Near the Refuge

The Project will irreparably harm the ability of CSP members and others to use the Refuge for recreation. DEIS Section 1.3.3.2 indicates that a map was created "to facilitate discussion of impacts to wildlife and recreational users within the Area of Influence (AOI)." However, the DEIS devotes very little discussion to the project's effects on the recreational use of the Refuge.

Canoeing, fishing, and hiking are deemed to be outside of the AOI, and were not discussed. The DEIS also asserts that bird watching will not be affected, but acknowledges that half of the bird watching overlooks in the Refuge will be directly impacted by increased truck traffic from the mine. Likewise, the assertion in the DEIS that hunting will not be affected defies common sense, since hunting naturally requires peace and quiet, which will undoubtedly be affected by noise from the mining operation. Further analysis of the effects on recreation is necessary to determine how hunting and recreational activities will be impacted by the proposed Project.

The Project also threatens the activities of the Jobs Corp Center, an educational training program administered by the U.S. Department of Labor. Its facilities are located immediately southeast of the proposed mine. The DEIS notes the potential for water drawdown to 7,000 feet. The Job Corps Center, which has no access to a public water source, reportedly uses 36,000-40,000 gallons per day of potable water from ground sources within the potentially affected area. CPS believes that Frontier's proposed well drawdown mitigation plan is inadequate for an operation of the size of the Jobs Corp Center. Disruption of water availability would result in the imposition of significant costs and the many students residing at the Job Corps Center would have to be relocated.

The close proximity of an industrial mining operation would also be disruptive and harmful to the educational mission and purpose of the Jobs Corp Center. Blasting and noise from mining operations would be disruptive of the academic environment. Roughly 255 students live in dormitories at the Jobs Corp Center. The vastly increased truck traffic creates safety risks for student pedestrians and/or bicyclists. Further, noise and dust pollution increases will negatively affect these students' quality of life. The DEIS does not appear to consider any of these issues. CSP therefore requests that Frontier be required to revisit these issues and supplement the DEIS accordingly.

DEC's draft permit dated January 29, 2016, Condition 6, proposes that the applicant be required to use water or other approved dust palliatives on roads and other parts of the mine to prevent visible dust from leaving the mine property. However, the DEIS fails to fully consider the range of side effects which could result from the proposed mining operation. This condition should be modified to require the use of water or other approved dust palliatives on trucks leaving the mine as well. Unlike other sources of dust within the mine boundary, trucks leaving the facility have the ability to cause dust pollution on a far greater scale. Therefore, methods for mitigating or reducing such dust pollution should be investigated by Frontier, and related conditions added to the draft permit.

Likewise, proposed DEC Permit Condition 10 discusses site access to the mine. The DEIS confirmed that the mine will greatly increase heavy truck traffic along several local roads. However, the DEIS and the draft permit do not adequately consider the effect on these roads. Therefore, CSP requests that the current condition of potentially affected roadways be surveyed, and that the costs of additional upkeep, maintenance and repair associated with the Project be allocated to Frontier accordingly.

C. The Project Threatens to Adversely Affect Private Water Wells, Buildings and Land Uses Near the Project

Many CSP members utilize private wells which may be endangered by the Project. Previous studies by the US Geological Survey indicate that the cone of depression created by a quarry of this size could extend over a very large area.

Condition 11 of DEC's draft permit requires Frontier to assist well owners if drawdown from mine dewatering negatively affect the owners' water wells. However, the DEIS does not appear to contain appropriate homeowner notification requirements with respect to the potential drawdown effect on these wells. Frontier should be required to conduct informational sessions for all potentially affected landowners so that those residents are aware of who to contact should a problem occur. In addition, the draft permit should be modified to require Frontier to forward any complaints received about the wells to the DEC to ensure prompt investigation of those complaints.

Condition 15 requires Frontier to conduct pre-blasting surveys of potentially affected buildings. The DEIS asserts, without independent verification or testing, that effects will be negligible on buildings more than 1700 feet from the blasting site. Frontier should be required to conduct such testing and to conduct a pre-blast survey for the Jobs Corp Center, the use of which warrants special consideration to ensure the safety of its students.

Condition 17 of the draft permit currently sets an air blast limit at 133dB outside of any dwelling, public building, school, church, or community or institutional building outside of the permit area. There does not appear to be any evidentiary support, in the DEIS or elsewhere, to support such this level of noise. Per OSHA, sound limits over 130 dB are louder than that of a jet taking off at 100m. The same resource described sounds at 140 dB as being at the "Threshold of pain." <https://www.osha.gov/SLTC/noisehearingconservation/index.html#loud>. Nor is there any indication that efforts were taken to mitigate the effect of blasting noise, other than to constrain it to certain time period. Further study on the noise limit for blasting is clearly required. In addition, sounds limits for blasting should be reduced to a more reasonable decibel level.

D. The Project Threatens the Long-Term Viability of the STAMP Project

The Project also has the potential to jeopardize the future growth and development of the science and technology park known as WNY STAMP which the Genesee County Economic Development Center is coordinating. The STAMP project is intended to foster employment and economic development in both Genesee and Orleans counties and therefore of significant importance and concern to the local residents and taxpayers comprising CSP's membership.

The location of the STAMP center reportedly was selected due to its relative stability with respect to seismic vibrations that are detrimental to the process of manufacturing high-technology products using sensitive equipment. Therefore, the assessment of seismic impacts from the Project is critical to the success of the STAMP project.

Unfortunately, CSP believes that the "test blast" conducted by Frontier to assess potential impacts on the surrounding area is deficient and suspect. The test reportedly used only a fraction of the explosives that would be utilized during normal Project operations and was contained in a well casing. Therefore, CSP believes that this test is not representative of actual Project operations and is an insufficient basis for rendering conclusions about potential impacts to the community and to the STAMP center. CSP is aware that these deficiencies have been cited by engineering personnel associated with the STAMP center, and it is CSP's understanding that Frontier has failed to cooperate with STAMP representatives in addressing these engineering concerns. Because New York State and other have committed significant tax dollars toward the infrastructure of the STAMP technology, NYSDEC should ensure that

potential adverse impacts on the STAMP project are thoroughly and adequately addressed and that appropriate permit conditions are imposed.

**LEGAL ISSUES FOR RESOLUTION
(6 NYCRR § 624.4(b)(2)(iv))**

The above-noted deficiencies in the DEIS for the Project raise legal issues, the resolution of which is not dependent on disputed facts and that can be resolved on their merits following argument at the issues conference. See 6 NYCRR § 624.4(b)(2)(iv). The DEIS violates SEQRA because it did not include an analysis of a number of critical issues identified above and therefore failed to provide both the requisite "description of the environmental setting . . . sufficient to understand the impacts of the proposed action and alternatives" and the required "statement and evaluation of the potential significant adverse environmental impacts." Id. § 617.9(b)(5)(ii)-(iii).

The DEIS also failed to include a complete and meaningful analysis of potentially significant cumulative impacts posed by the Project. Further, the DEIS did not provide a meaningful or complete analysis of the no-action alternative, analysis of potential alternative water discharge practices or alternative sites. For example, DEIS Section 7.0 fails to consider potential use of other areas along the entire 200 miles of the Lockport Formation in NY State. Compliance with these procedural requirements is subject to a "strict compliance" standard of review. See *Matter of King v Saratoga County Bd. of Supervisors*, 89 N.Y.2d 341, 347-48 (1996).

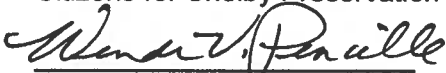
CSP submits that the major omissions outlined herein cannot be cured merely by including the missing analysis in the Final EIS. See *Webster Assoc. v Town of Webster*, 59 NY2d 220, 228 (1983) ("[T]he omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS."). Rather, DEC must issue a revised version of Frontier's DEIS for public comment.

CONCLUSION

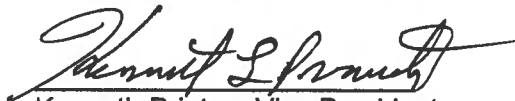
For the foregoing reasons, CSP, I and Kenneth Printup and Francis M. Domoy Ph.D., request that we be granted, collectively and individually, full party status in a hearing scheduled for adjudication of the substantive and significant issues identified above and that all legal issues not dependent on disputed facts be resolved on the merits in favor of CSP.

Respectfully Submitted,

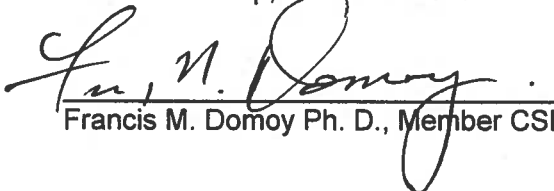
Citizens for Shelby Preservation



By: Wendi Pencile, President



Kenneth Printup, Vice President



Francis M. Domoy Ph. D., Member CSP resident land owner Town of Shelby

To:

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