

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

7013 1090 0002 3365 4813

September 16, 2015

Mr. Luis Antunes
J & A Sand & Gravel, Inc.
9 Union Avenue
Ronkonkoma, NY 11779

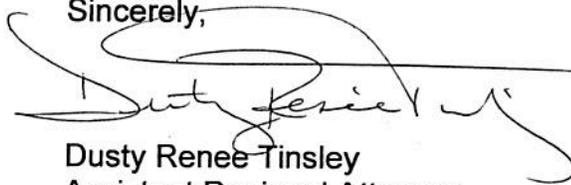
Re: Order of Consent
R4-2015-0701-79
MLF# 40875
Permit #4-1224-00517/00001

Dear Mr. Antunes:

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,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff
M. Lanzafame



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Article 23 Title 27, Article 17, and Article 19 of
the New York State Environmental
Conservation Law

ORDER ON CONSENT

-by-

J & A Sand & Gravel, Inc.,

R4-2015-0701-79

MLF #40875

Permit #4-1224-00517/00001

Respondent.

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over Mined Land Reclamation, Air Pollution Control Law, and Water Pollution Control in the State pursuant to Article 17, Article 19, and Article 23 Title 27 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereunder.
2. Respondent, J & A Sand & Gravel, Inc., is the owner and/or operator of Antunes Mine located off State Highway 30 at Trout Brook Road, Sinhopple, New York 13755 in the Town of Colchester (Delaware County)(“Facility”).
3. Effective February 11, 2010, Respondent was issued an Article 23 Title 27 Mined Land Reclamation permit (#4-1224-00517/00001) (“Permit”) for the Facility. The permit expired on February 10, 2015.
4. On January 9, 2015, Respondent submitted a renewal and modification application for the Facility including a plan for the construction of a stormwater retention pond. This application is under review by Department staff.
5. The Facility does not have an air state facility permit.
6. The Facility does not have a State Pollution Discharge Elimination System (“SPDES”) permit.

Mined Land Reclamation Violation

7. ECL Section 71-1305(2) states, “It shall be unlawful for any person to: . . . Violate any . . . order or condition of any permit of the department made pursuant thereto.”
8. The permit states “There shall be no natural swales or channels or constructed features such as ditches, pipes, etc., that are capable of discharging waters to any offsite areas or to any areas outside the limits of the Life of Mine except those explicitly described and shown in the narrative and graphic portions of the approved Mined Land Use Plan. All silt laden water and stormwater generated on, or running across, the site shall be retained within the approved project area.”

9. Department staff conducted an inspection of the Facility on April 23, 2015 and observed silt laden stormwater flowing offsite via the access road ditches into the Route 30 roadside ditches and stormwater impacting the parking area near the office. Department staff also observed that the stormwater had the potential to enter the manhole that drains to the roadside ditches.
10. A Notice of Violation was issued to Respondent by Department staff on April 27, 2015 regarding the stormwater violation observed at the Facility on April 23rd.
11. Department staff conducted an inspection of the Facility on June 9, 2015 and observed silt laden stormwater flowing offsite via the access road ditches into the Route 30 roadside ditches
12. A Notice of Violation was issued to Respondent by Department staff on June 10, 2015 regarding the stormwater violation observed at the Facility on June 9th.
13. Respondent's failure to maintain silt laden water and stormwater generated on, or running across, the Facility within the approved project area is a violation of the Permit and of ECL Section 71-1305(2).

Requirement to Obtain a SPDES Permit

14. 6 NYCRR Part 750-1.4(a) states that "Except as provided in subdivision (a) of section 750-1.5 of this Part, no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL Article 17, titles 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit."
15. During the April 23, 2015 inspection, Department staff observed silt laden stormwater flowing offsite via the access road ditches into the Route 30 roadside ditches and stormwater impacting the parking area near the office as well as that the stormwater had the potential to enter the manhole that drains to the roadside ditches.
16. During the June 9, 2015 inspection, Department staff observed silt laden stormwater flowing offsite via the access road ditches into the Route 30 roadside ditches.
17. Respondent's discharge of silt laden water and stormwater generated on, or running across, the Facility without a SPDES permit is a violation 6 NYCRR Part 750-1.4(a). No SPDES permit will be issued for this conduct.

Air Pollution Control Law Violation

18. 6 NYCRR Part 201-1.2(a) states that "Except as otherwise provided by this Part, construction or operation of a new, modified or existing air contamination source without a registration or permit issued pursuant to this Part is prohibited".
19. 6 NYCRR Part 201-3.2(c)(29) states that "The following activities are exempt from permitting requirements at non-title V facilities, but must be listed in title V facility

permit applications . . . (29) Any sand and gravel processing or crushed stone processing line at a non-metallic mineral processing facility that: (i) is a permanent or fixed installation with a maximum rated processing capacity of 25 tons of minerals per hour or less; (ii) is a portable emission source with a maximum rated processing capacity of 150 tons of minerals per hour or less; or (iii) is used exclusively to screen minerals at a facility where no crushing or grinding takes place.”

20. Department staff conducted an inspection of the Facility on June 9, 2015 and observed an unpermitted rock crusher, with a maximum rated capacity of 350 tons per hour, in operation at the Facility.
21. A Notice of Violation was issued to Respondent by Department staff on June 30, 2015 regarding the operation of an unpermitted rock crusher violation observed at the Facility on June 9th.
22. Respondent’s operation of a rock crusher which exceeds the 150 tons per hour exemption threshold without a permit is a violation of 6 NYCRR Part 201-1.2(a).

August 13, 2015 Inspection

23. On August 13, 2015, Department staff inspected the Facility. At the time of the inspection Respondent had returned to compliance with all violations cited in the April 27, 2015 and June 10, 2015 Notices of Violation.

Waiver

24. 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

25. ECL Section 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 and an additional penalty of two thousand dollars for each day during which such violation continues”
26. ECL Section 71-2103 states that “any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto . . . shall be liable, in the case of a first violation, for a penalty not less than five hundred dollars nor more than eighteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. . . . In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”
27. ECL Section 71-1929 states that “A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under,

shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

Remedies

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

I. **Civil Penalty.** With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of TEN THOUSAND DOLLARS (\$10,000). FIVE THOUSAND DOLLARS (\$5,000) of the civil penalty shall be paid by bank check made payable to the Department of Environmental Conservation with the return of the signed and notarized Order. FIVE THOUSAND DOLLARS (\$5,000) of the civil penalty is suspended conditioned on Respondent’s compliance with ECL Articles 17, 19 and 23, and all regulations promulgated thereunder, for two years from the effective date of the Order. Respondent shall submit a check made payable to the Department of Environmental Conservation within 15 days of receipt of a notice of violations setting forth the violations of ECL Articles 17, 19 and 23, and all regulations promulgated thereunder. The payment of the suspended penalty shall not limit the Department’s ability to seek further civil penalties or commence any other actions for violations of ECL Articles 17, 19 and 23, and all regulations promulgated thereunder.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

II. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

III. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. **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 in order for DEC to inspect and determine the status of Respondent’s compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

V. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VI. **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, its officers, directors, agents, servants, employees, successors and assigns;

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

D. 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

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.

VII. **Third Parties.** This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

VIII. **Communications.** Communications shall be sent to

Department:

New York State Department of Environmental Conservation
Region 4
Psalm Wyckoff (email: psalm.wyckoff@dec.ny.gov) and
Mark Lanzafame (email: mark.lanzafame@dec.ny.gov)
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.

Respondent:

Mr. Luis Antunes
J & A Sand & Gravel, Inc.
9 Union Avenue
Ronkonkoma, NY 11779

DATED: Rotterdam, New York
September 16, 2015

Marc Gerstman
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

