

**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**  
7013 1090 0002 3365 1232

April 2, 2015

Mr. Anthony Valente  
118 Button Road  
Waterford, NY 12188

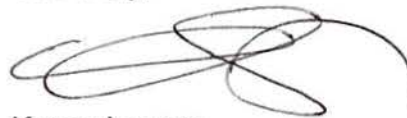
Re: Order of Consent  
R4-2014-0124-11

Dear Mr. Valente:

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

This will also acknowledge receipt of \$10,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: D. Thorsland  
P. Evans  
N. Baker  
M. Ellis



Department of  
Environmental  
Conservation

STATE OF NEW YORK:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law ("ECL")  
Articles 17 and 23 and Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
("6 NYCRR")

- by -

**ORDER ON CONSENT**  
File No. R4-2014-0124-11

R.J. Valente Gravel Inc.  
118 Button Road  
Waterford, NY 12188

Respondent

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WHEREAS:

1. The Department of Environmental Conservation ("Department") is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.
2. The Department has administrative jurisdiction pursuant to Title 27 of ECL Article 23 to regulate surface mining and reclamation.
3. Respondent owns/operates Grafton Quarry, located on NYS Route 2, Grafton, New York, Rensselaer County ("site").
4. Respondent has a Mined Land Reclamation Permit (4-3826-00017/00003) effective December 2, 2013, to mine a sand and gravel mine known as Grafton Quarry, located on NYS Route 2, Grafton, New York, Rensselaer County ("mine").
5. ECL §71-1305(2) provides that *"It shall be unlawful for any person to violate any of the provisions of or fail to perform 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."*

First Violation

6. Permit condition Number 6 of Respondent's Mined Land Reclamation Permit provides that *"water or other approved dust palliatives must be applied to haulageways and other parts of the mine, as often as necessary, to prevent visible dust from leaving the mine property."*
7. Special condition Number 17 of Respondent's Mined Land Reclamation Permit provides that *"the surface of any paved road that intersects with any entrance/exit to the mine and the entrance/exit areas, shall be kept free of any spilled and/or tracked material which can cause dust, slippery conditions or any other condition that is unhealthy or unsafe."*

8. On November 8, 2013 and November 12, 2013, Department staff observed that the access road to the mine was covered with dust and debris from mining operations. The trail of dust and debris continued onto NYS Route 2 going westbound for approximately one mile. These conditions were observed on both the mornings and evenings of November 8, 2013 and November 12, 2013. On the following days, November 9, 2013, and November 13, 2013, the same violations were observed which indicates that measures were not taken to abate the problem.

9. On December 2, 2014, Department staff observed dust and debris originating from the mine, onto NYS Route 2.

10. Respondent's failure to prevent visible dust from leaving the mine and covering the roadway is a violation of Permit condition Number 6 and Special Condition 17 of Respondent's Mined Land Reclamation Permit.

#### Second Violation

11. Special Condition Number 18 of Respondent's Mined Land Reclamation Permit provides that "*there shall be no importation, storage, disposal or processing of materials of any kind from offsite sources within the life of mine, without first applying for and obtaining a modification to this permit.*"

12. Special Condition Number 39 of Respondent's Mined Land Permit provides that "*There shall be no disposal, storage, transfer of trash, garbage, demolition debris or other wastes regulated under the Environmental Conservation Law in the mine.*"

13. On December 5, 2014, Department staff observed the importation and burying of bricks, concrete slabs and piles, and asphalt chunks being buried in the southeast portion of the mine.

14. Respondent's importation and burying of bricks, concrete slabs and piles, and asphalt chunks is a violation of Special Condition Numbers 18 and 39 of Respondent's Mined Land Reclamation Permit.

#### Third Violation

15. Special Condition Number 4 of Respondent's Mined Land Permit provides that "*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 storm water generated on, or running across the site shall be retained within the approved project area. The permittee must comply with all applicable State Pollutant Discharge Elimination System (SPDES) permit requirements and provide necessary notifications for off-site point source discharges.*"

16. On December 5, 2014, Department staff observed a hose from a retention pond on site, to the Quackenkill.

17. Respondent's use of a drainage hose is a violation of Special Condition Number 4 of Respondent's Mined Land Reclamation Permit.

#### Fourth Violation

18. Regulations at 6 NYCRR 422.1 provides that “*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.*”

19. On December 5, 2014, Department staff observed that Respondent had placed overburden piles in the southern portion of the mine outside of the permitted Life of Mine boundaries.

20. Respondent violated regulations at 6 NYCRR 422.1 by placing overburden piles in the southern portion of the mine outside of the permitted Life of Mine boundaries.

#### Fifth Violation

21. On December 7, 2012, Respondent entered into an Order on Consent (R4-2012-0179-68) (“Order”), the Schedule of Compliance for which required in part:

3. *Within 60 days of the effective date of the Order, Respondent shall submit a plan and schedule for site improvements consistent with the NYS Standards and Specifications for Erosion and Sediment Control (NYSSESC) to address the following deficiencies identified during the November 22, 2010 inspection as well as dust and stormwater issues on the entrance road to the Grafton Quarry off Route 2. This plan may include changing the grade of the exit road and conducting truck tire washing in a level area before entering the paved area access road. The schedule will become enforceable under this Order upon Department review and approval. The plan must also address the following:*

- *The entrance road lacked adequate conveyance channels to convey runoff in a non-erosive manner.*
- *Sediment was observed plugging the catch basin on the lower end of the entrance road intended to convey the runoff beneath the entrance road to the lowest sediment pond.*
- *Leaves & debris on the same catch basin grate prevented runoff from entering the catch basin causing it to run down to the roadside ditch along Route 2.*
- *The pipe intended to convey runoff from the roadside ditch along Route 2 under the entrance road was also plugged with sediment.*
- *Runoff from the scale area is discharged through a pipe into a wooded area between the entrance road and Route 2. A conveyance system to direct this runoff into the lowest sediment pond was not evident.*
- *Provide documentation to determine the capacity of the lowest sediment pond. Although the site representative indicated that the pond does not discharge, there was evidence that the water level had exceeded the embankment height resulting in an overflow.*
- *Drag out of material was observed onto Route 2.*

22. Respondent’s failure to submit documentation in accordance with Schedule of Compliance No. 3 of the 2012 Order, is a violation of the 2012 Order on Consent.

#### Sixth Violation

23. ECL §17-0511 prohibits the use of existing point sources which discharge waste into the waters of this State unless such a use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the Department.

24. Respondent is required to submit DMRs no later than the 28<sup>th</sup> day of the month following the end of the reporting period.
25. Department staff reviewed their records and discovered that Respondent has not submitted DMRs in a timely manner, for the period ending 1/31/12, 4/30/12, 7/31/12.
26. Department staff further reviewed their records and discovered that Respondent has not submitted DMRs for 7/31/13, 10/31/13, 1/31/14, 4/30/14, 7/31/14, and 10/31/14.
27. Respondent violated ECL §17-0511 by failing to submit DMRs in a timely manner, for the period ending 1/31/12, 4/30/12, 7/31/12, 7/31/13, 10/31/13, 1/31/14, 4/30/14, 7/31/14, and 10/31/14.
28. ECL § 71-1307(1) provides that any person who violates any provision of ECL 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 \$8,000 and an additional penalty not to exceed \$2,000 for each day during which such violation continues.
29. On February 17, 2015, Respondent submitted the previously unprovided DMR documentation to the Department.

#### Waiver of Rights

30. 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 agree to be bound by the terms, provisions and conditions contained herein.

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

#### Civil Penalty

I. In respect of the aforesaid alleged violations, a civil penalty in the amount of FOURTEEN THOUSAND DOLLARS (\$14,000) of which TEN THOUSAND DOLLARS (\$10,000) shall be payable to the New York State Department of Environmental Conservation by money order, or check at the time this Order is signed, notarized and returned to the Department.

The balance FOUR THOUSAND DOLLARS (\$4,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or its duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:  
Regional Water Engineer  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 or permits issued 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 agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's 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.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

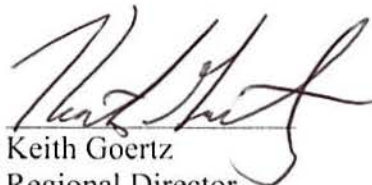
2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: *April* 1, 2015  
Rotterdam, NY

Commissioner  
New York State Department of  
Environmental Conservation

BY:

A handwritten signature in black ink, appearing to read "Keith Goertz", written over a horizontal line.

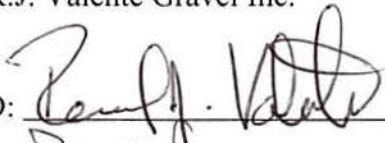
Keith Goertz  
Regional Director  
Region 4



CONSENT BY RESPONDENT

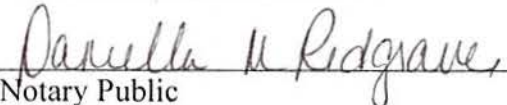
Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

R.J. Valente Gravel Inc.

SIGNED:   
TITLE: PRES  
DATE: 3-27-15

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

On the 27 day of March in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Rodolfo J. Valente 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.

  
Notary Public  
Qualified in the County of:  
My Commission Expires:

DANIELLA M REDGRAVE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RE6044585  
Qualified in Saratoga County  
My Commission Expires November 17, ~~2014~~ 2018

## Schedule of Compliance

1. By May 30, 2015, Respondent shall submit to the Department, a plan addressing the use of existing brick, concrete slabs and piles and asphalt chunks buried in the southeast portion of the mine. Any material not temporarily stored in the southeast portion of the mine shall be properly disposed of. No additional imported material shall be brought into the mine.
2. By May 30, 2015, the hose and pump adjacent to the Quackenkill must be removed and cannot be utilized in the future without a permit modification.
3. Any clearing of land adjacent and outside of the Life of Mine boundaries must cease and disturbed areas stabilized. No further overburden storage outside the Life of Mine boundaries may occur until permitted.
4. Within 90 days of the effective date of the Order, the Respondent shall submit to the Department, a plan and schedule for site improvements consistent with the NYS Standards and Specifications for Erosion and Sediment control (NYSSDESC) to address ongoing dust and stormwater issues on the entrance road to the Grafton Quarry off Route 2. The plan should describe in detail any improvements made to the entrance road and any future modifications. This plan may include conducting truck tire washing and relocation of stockpiles to prevent fugitive dust from leaving the property boundaries. The plan must also address the following issues:
  - *The entrance road lacked adequate conveyance channels to convey runoff in a non-erosive manner.*
  - *Sediment was observed plugging the catch basin on the lower end of the entrance road intended to convey the runoff beneath the entrance road to the lowest sediment pond.*
  - *Leaves & debris on the same catch basin grate prevented runoff from entering the catch basin causing it to run down to the roadside ditch along Route 2.*
  - *The pipe intended to convey runoff from the roadside ditch along Route 2 under the entrance road was also plugged with sediment.*
  - *Runoff from the scale area is discharged through a pipe into a wooded area between the entrance road and Route 2. A conveyance system to direct this runoff into the lowest sediment pond was not evident.*
  - *Provide documentation to determine the capacity of the lowest sediment pond. Although the site representative indicated that the pond does not discharge, there was evidence that the water level had exceeded the embankment height resulting in an overflow.*
  - *Drag out of material was observed onto Route 2.*

The plan shall become an enforceable part of this Order.