



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Bethany A. Card  
Secretary

Martin Suuberg  
Commissioner

December 13, 2022

**BY EMAIL:** [mary@nofossilfuel.com](mailto:mary@nofossilfuel.com)

O'Donnell Family Trust  
Attn: Mary O'Donnell, Trustee  
24 Pond View Drive  
Kingston, Massachusetts 02364

RE: **KINGSTON**  
Release Tracking Number: 4-0026367  
O'Donnell Sand & Gravel  
48 Marion Drive  
**ACO-SE-16-3P-003 – SECOND AMENDMENT  
WITH PENALTY  
ENFORCEMENT DOCUMENT NUMBER  
00012738**

Dear Ms. O'Donnell:

Please find enclosed a signed copy of the Second Amendment to Administrative Consent Order Number ACO-SE-16-3P-003 ("Second Amendment") that the Department of Environmental Protection (MassDEP) has negotiated with O'Donnell Family Trust.

The Consent Order was executed on December 13, 2022. The terms and conditions of the Consent Order now apply and are binding.

If you have any questions regarding this Second Amendment or any of the requirements contained in it, please contact John Handrahan at the letterhead address or to [john.handrahan@mass.gov](mailto:john.handrahan@mass.gov), or by calling (508) 946-2883. MassDEP appreciates your cooperation in this matter.

Sincerely,

Millie Garcia-Serrano  
Regional Director

JH/AH/ah

Enclosure: Copy of Administrative Consent Order Amendment #2 00012738

ec: Town of Kingston  
Select Board  
Board of Health

Shawn O'Donnell  
[Shawn@nofossilfuel.com](mailto:Shawn@nofossilfuel.com)

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DEP-SERO

Attn: Millie Garcia-Serrano, Regional Director  
Attn: John Handrahan, Acting Deputy Regional Director  
Attn: Andrew Fowler, Regional Counsel  
Attn: Lara Goodine, Regional Enforcement Coordinator

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

O'Donnell Family Realty Trust

RE: **KINGSTON**

Release Tracking Number: 4-0026367

O'Donnell Sand & Gravel

**ENFORCEMENT DOCUMENT NUMBER  
00012738**

**SECOND AMENDMENT TO ADMINISTRATIVE CONSENT ORDER NUMBER ACO-SE-16-3P-003**

This Second Amendment further modifies the Administrative Consent Order (ACO-SE-16-3P-003 or "Consent Order"), between the Massachusetts Department of Environmental Protection ("MassDEP" or the "Department") and the O'Donnell Family Realty Trust ("Respondent" or "Owner"), that established the terms and conditions by which the Respondent was authorized to bring fill material from off-site sources onto its property located at 48 Marion Drive, Kingston, Massachusetts (the "Site").

On October 7, 2016, MassDEP issued the Consent Order accompanied by a Soil Management Plan ("SMP") which specifies soil handling procedures, soil acceptance criteria and requirements for inspections, monitoring and reporting to MassDEP and the Town of Kingston, Massachusetts. Paragraph 6.Q of that Consent Order summarizes the Town of Kingston Board of Selectmen's approval of the site reclamation activities. The Consent Order was modified with a First Amendment on May 26, 2021 ("First Amendment").

The Department and the Respondent agree to incorporate the following changes into the Consent Order, and enter into this Second Amendment.

1. *Added to Section II, after paragraph 6.Q, are the following subsections:*

- R. On May 26, 2021, the Department and Respondent entered into a First Amendment to the Consent Order for the purpose of allowing Respondent to expand its operation to "Phase III and Phase IV" areas of the Site. The First Amendment incorporated the Consent Order's "Stipulated Penalty" provision, which sets forth a schedule of penalties for each day Respondent might remain in non-compliance with the Consent Order.
- S. Paragraph 5.b of that First Amendment states, *"All other terms and conditions of the Consent Order shall remain in effect, including but not limited to Paragraph 9.D that states 'Respondent shall ensure that Site reclamation activities do not result in a Condition of Air Pollution with respect to dust, noise, and odors pursuant to 310 CMR 7.01.' Moreover, in accordance with Paragraph 9.P that requires Respondent to submit certain documentation to the Kingston Board of Selectmen, Respondent shall submit to the Board an updated Construction Status Report which reflects the Expanded SMP."* For the reasons stated below, Respondent has failed to comply with the Consent Order and the First Amendment.

- T. Paragraph 9.Q of the Consent Order states, *"Respondent shall submit quarterly Construction Status Reports to MassDEP and the Kingston Board of Selectmen by the 15<sup>th</sup> of the following month."* See also Section XV.b of the SMP. Respondent has failed to submit Quarterly Construction Status Reports since June 2020. Respondent was due to submit these reports on or about July and October 2020, and January, April, July, and October 2021.<sup>1</sup> On August 31, 2022, Respondent, acting by and through its new civil engineering and licensed site professional consultant submitted a Quarterly Construction Report (covering the period from June 2020 to August 2022) to MassDEP. The Department considers Respondent to be responsible for these aspects of compliance with the Consent Order and asserts that Respondent is subject to daily stipulated penalties between October 2020 and August 2022.
- U. Paragraph 9.F of the Consent Order states, *"Respondent shall implement a groundwater monitoring program outlined in the SMP..."*. The SMP, in the section entitled "Ground Water Monitoring", states, *"During the operation of the Receiving Site, there will be annual sampling and analyses of the MWs for the full suite of analytes."* Groundwater was sampled in 2020 and 2021, but that information was not provided in a Quarterly Construction Status Report. On August 31, 2022, Respondent submitted current groundwater data in a Quarterly Construction Status Report. The Department considers Respondent to be responsible for these aspects of compliance with the Consent Order and asserts that Respondent is subject to daily stipulated penalties between October 2020 and August 2022 for failing to submit annual groundwater data as required.
- V. Paragraph 9.D of the Consent Order states, *"Respondent shall ensure that Site reclamation activities do not result in a Condition of Air Pollution with respect to dust, noise, and odors pursuant to 310 CMR 7.01"*. Furthermore, Consent Order Paragraph 10 states, *"MassDEP reserves the right to require Respondent to take any and all actions necessary to ensure that the activities conducted at the Property do not cause any nuisance conditions including, but not limited to, dust, noise, odor, or wetland impacts"*. Respondent has created a condition of air pollution by generating fugitive dust during delivery and placement of reclaimed soils, and from unstabilized top slopes and side slopes in the reclamation area following placement and grading. The Department observed conditions of air pollution at the Site and extending off the Site on March 21, 2022, March 22, 2022, March 28, 2022, and April 29, 2022. The Department considers Respondent to have been in non-compliance with this provision and subject to daily stipulated penalties on these four dates.
- W. During July and August 2022, MassDEP and Respondent met to discuss above facts and allegations, as well as to discuss corrective measures. On August 31, 2022, in response, Respondent submitted an updated Dust Control Plan prepared by Green Environmental ("the Dust Control Plan") with descriptions of improvements Respondent has already implemented and will be implementing, and submitted the Quarterly Construction Status Report referred to above.

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<sup>1</sup> The Respondent formerly employed a prior civil engineering consultant that was employed to prepare and submit these Quarterly Reports on behalf of the Respondent. This consultant was terminated and the Respondent has employed a new engineering firm and licensed site professional to be responsible for the preparation and submission of these reports.

- X. For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Second Amendment. Similar to Paragraph 7 of the Consent Order, the parties have agreed to enter into this Second Amendment because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
- Y. The terms of the First Amendment, which permitted Phase II of the reclamation area, remain in effect except as superseded by this Second Amendment.

2. *Section III, paragraph 9.D, that originally stated:*

- D. Respondent shall ensure that Site reclamation activities do not result in a Condition of Air Pollution with respect to dust, noise, and odors pursuant to 310 CMR 7.01.

*is hereby amended to read:*

- D. Respondent shall ensure that Site reclamation activities do not result in a Condition of Air Pollution with respect to dust, noise, and odors pursuant to 310 CMR 7.01. Respondent shall take the following actions in furtherance of meeting this requirement:
  - i. **Dust Control.** Respondent shall implement and maintain dust control measures set forth in the Dust Control Plan, in accordance with and subject to the following conditions:
    - a. **By April 1, 2023**, Respondent shall install a new irrigation well that shall be operational for filling water trucks and for any other dust suppression measures that may be implemented (e.g., a sprinkler system for the roadways).
    - b. **Effective forthwith**, the watering regimen described in the Dust Control Plan shall be implemented. The Dust Control Plan indicates that watering of roadways and work areas will be conducted up to four times a day. The watering schedule is subject to daily change based upon truck traffic, and prevailing weather conditions such as wind speed, wind direction, and precipitation. Respondent shall take appropriate and timely steps to adjust its watering schedule and methods accordingly. All watering shall be logged in a Record of Watering log specified in Section 7.2 of the Dust Control Plan which shall be kept on-site. After monitoring data demonstrates that the measures implemented to control dust are proven effective, the Respondent and the Department agree to meet to reevaluate watering schedule and methods.
    - c. **Effective forthwith and on an ongoing basis**, Respondent shall apply and maintain permanent and non-permanent cover materials to stabilize areas that are inactive or have achieved elevation milestones in the reclamation process. Stabilization materials may include covers such as mulch, stone, hydroseed, mats, synthetic liners,

and application of commercial soil armoring materials. Stabilization materials shall be properly maintained throughout the soil reclamation project.

- d. **Effective forthwith and on an ongoing basis**, real-time air monitoring stations shall be installed and operational around the site to record instances of potential fugitive dust. If the instruments detect a condition of potential fugitive dust, defined as a reading of a 15-minute time weighted average (TWA) of 75 micrograms per cubic meter on the DustTrak DRX Monitor, the Respondent shall take appropriate and timely steps to affirmatively monitor site conditions and adjust its watering schedule and methods accordingly. If the instruments detect a condition of possible fugitive dust, defined as a reading of a 15-minute TWA of 150 micrograms per cubic meter on the DustTrak DRX Monitor, work at the site is to cease until the Independent Third Party Inspector (ITPI) or Site LSP/QEP can certify or attest that the condition has been abated. All events associated with instrument detections of a condition of possible fugitive dust are to be reported in Monthly Inspections Reports. See also below Paragraph 3 of this Second Amendment which amends Paragraph 9.R of the Consent Order.
- e. A permanent weather station has already been installed and is operational at the Site to continuously monitor meteorological conditions during the reclamation activities. Further to Section 5.1 of the Dust Control Plan, if the weather station records sustained wind speeds of greater than 20 miles per hour for greater than two hours, Respondent shall call the ITPI or Site LSP/QEP to the site. While there, the ITPI or Site LSP/QEP shall inspect elements of the Dust Control Plan pursuant to Consent Order Paragraph 9.R.ii.e., as amended below, and remain at the Site a reasonable time to make the observations required by Paragraph 9.R.iv.e, as amended.
- f. **By December 30, 2022**, Respondent shall install and maintain a new access road surfaced with reprocessed asphalt or concrete to the north and west of the original access road, as explained by the Dust Control Plan. If this access road is relocated to accommodate future work at the site, Respondent shall relocate said replacement access road and use reprocessed asphalt or concrete surfacing. The reprocessed asphalt or concrete shall be added not later than **May 15, 2023**. The road shall be constructed and managed according to best management practices for construction and stormwater.
- g. The Dust Control Plan states that a dust control training program will be implemented for all Site personnel to review potential sources of dust, individual responsibilities, and actions for effectuating the Dust Control Plan. Respondent shall certify in the first Quarterly Report of each year that the training has been completed.
- h. Paragraph 9.R.iv.e of the Consent Order requires the ITPI's monthly inspection reports to contain "observations of airborne dust and dust control measures employed". Pursuant to this Second Amendment, and as further described below in Paragraph 3 of this Second Amendment, at all future ITPI inspections, or if called to the site pursuant to Sections 2.D.i.d. or e. of this Second Amendment, the ITPI shall bring a copy of the most recent Dust Control Plan. The ITPI's monthly inspection reports shall document: (i) whether the Record of Watering log is up to date; (ii) what



active or passive dust control measures were observed during the course of the inspection; and (iii) the effectiveness of those measures.

- i. Upon a material change in circumstances, Respondent may petition MassDEP to terminate or modify the above conditions.

3. *Section III, Paragraph 9.R, that originally stated:*

- R.ii.e. During each inspection, the Independent Third-Party Inspector shall, at a minimum: [...] Inspect all erosion control measures including but not limited to, silt fences, hay bales, temporary basins, and swales.
- R.iv.e. The Independent Third-Party Inspector shall prepare an inspection report documenting the findings for each inspection and shall submit such report to Respondent and MassDEP on or before the 15<sup>th</sup> of each month. Each inspection report shall include, but not be limited to: [...] observations of airborne dust and dust control measures employed.

*is hereby amended to read:*

- R.ii.e. During each inspection, the Independent Third-Party Inspector shall, at a minimum: Inspect all dust and erosion control measures including but not limited to, site irrigation and watering, cover materials such as loam and seed, dust/air monitors, silt fences, hay bales, temporary basins, and swales.
  - R.iv.e. The Independent Third-Party Inspector shall prepare an inspection report documenting the findings for each inspection and shall submit such report to Respondent and MassDEP on or before the 15<sup>th</sup> of each month. Each inspection report shall include, but not be limited to a summary of: (1) the dates and times the ITPI was on-site; (2) whether the Record of Watering log is up to date; (3) the status and condition of the control measures specified by the Dust Control Plan; (4) the effectiveness of those measures; and (5) observations of weather conditions and fugitive dust.
4. The requirements in above Sections 2 and 3 shall be incorporated by reference into an Expanded Soil Management Plan (ESMP) for the Site (which shall supersede the Revised Soil Management Plan submitted on February 3, 2021). By **December 30, 2022**, Respondent shall submit to the Department via eDEP an updated ESMP that expressly restates and incorporates the conditions above. The ESMP shall also include as an attachment or appendix the Dust Control Plan, that also expressly restates and incorporates the conditions above.

5. *Added to Section III, after paragraph 9.V, is the following subsection:*

W. Pursuant to Paragraph 23 of the Consent Order, the Commonwealth assesses, and Respondent agrees to pay, a stipulated penalty in the amount of **Fifty-Five Thousand Seven Hundred Eighty-Two dollars (\$55,782.00)** for the violations identified in Part II above, as follows:

i. **Within thirty (30) days** of the effective date of this Consent Order, Respondent shall pay to the Commonwealth Eleven Thousand dollars (\$11,000.00); and

ii. **Within sixty (60) days** of the effective date of this Consent Order, Respondent shall pay to the Commonwealth Eleven Thousand dollars (\$11,000.00);

iii. **Within ninety (90) days** of the effective date of this Consent Order, Respondent shall pay to the Commonwealth Eleven Thousand dollars (\$11,000.00); and

iv. **Within one hundred twenty (120) days** of the effective date of this Consent Order, Respondent shall pay to the Commonwealth Eleven Thousand dollars (\$11,000.00).

v. MassDEP hereby agrees to suspend payment of the sum of **Eleven Thousand Seven Hundred Eighty-Two dollars (\$11,782.00)**; provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within **one year** of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the remaining amount of **Eleven Thousand Seven Hundred Eighty-Two dollars (\$11,782.00)** within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

X. Respondent shall pay all stipulated penalties due under this Consent Order, including any associated fees. Respondent has four options for payment: certified check; cashier's check; on-line payment using a credit card; or electronic transfer.

Options 1 and 2:

Certified or cashier's checks must be made payable to the Commonwealth of Massachusetts and received within 30 days of the effective date of this Consent Order. If payment is made by certified check or cashier's check, Respondent shall clearly print on the face of its payment Respondent's full name, the enforcement document number appearing on the first page of this Consent Order, and Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982  
(IMPORTANT: DO NOT INCLUDE SIGNED CONSENT ORDER WITH CHECK)

Option 3:

Online Payment Using Credit Card

Your prospective BILL will contain information necessary to pay on-line by credit card. When you receive your BILL:

LOG ONTO THE MassDEP e-PAYMENT WEB SITE AT: [HTTPS://WWW.MASSPAYS.COM/dep](https://www.masspays.com/dep)



Online payment using credit card is due within 30 days of the effective date of this Consent Order.

(If a BILL (invoice) is not received within 10 days of the effective date of the consent order, you should contact The Revenue Department at 781-525-7436 to obtain a copy of your BILL (invoice).)

Option 4:

Electronic Funds Transfer

Respondent must complete the Administrative Penalty Notification Form found at <https://massgov.formstack.com/forms/apn> to request payment by Electronic Funds Transfer. The form can also be used to correct any information on the invoice, including billing name, address, etc. MassDEP will respond by email with all the information needed to set up the EFT payments.


In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

6. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order Amendment and to legally bind the party on whose behalf they are signing this Amendment.
7. This Amendment shall become effective on the date that it is executed by MassDEP.
8. The Department represents that the Regional Director has the authority to issue this Amendment on behalf of the Department.
9. The remaining provisions of the Consent Order, specifically Section III, which addresses the terms and conditions for imposing further stipulated penalties and the waiver of the right to an adjudicatory hearing, remain in force.

In the Matter of: O'Donnell Family Realty Trust  
Enforcement Document Number: 00012738

**Consented To:**

**O'DONNELL FAMILY REALTY TRUST**


By:   
Shawn O'Donnell, Trustee  
24 Pond View Drive  
Kingston, Massachusetts 02364  
Federal Employer Identification No: 46-6658915

Date:

12/12/22

**Issued By:**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:   
Millie Garcia-Serrano, Regional Director  
Southeast Regional Office  
20 Riverside Drive  
Lakeville, Massachusetts 02347

Date:

December 13, 2022