

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

In the matter of:
Graniteville Materials, LLC

Enforcement Document Number:
00017955
Issuing Bureau: BAW
Issuing Region/Office: NERO
Issuing Program: AQ
Primary Program Cited: AQ
Subpgm(s) Cited: N/A
Suffix(es): Click here to enter text.
FMF/Program ID # 363278

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at 100 Cambridge Street, Boston, MA 02114, and its Northeast Regional Office at 150 Presidential Way, Woburn, Massachusetts.
2. Graniteville Materials, LLC (“Respondent”) is a Massachusetts corporation with a principal place of business at 49 North Main Street, Westford, Massachusetts (the “Facility”). Respondent’s mailing address for purposes of this Consent Order is 49 North Main Street, Westford, Massachusetts.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of: M.G.L. c. 111, §§ 142A-142O and the Air Pollution Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent owns and operates a quarry and rock crushing operation at the Facility. The Facility’s operations include producing crushed stone, gravel, and aggregate material storage and transport.

5. The following facts and allegations have led MassDEP to issue this Consent Order:

AIR QUALITY CONTROL

- A. The Respondent's operation involves the production and storage of crushed stone, gravel and/or aggregate stone for use of concrete production or general sale of materials.
- B. The principal location of the Facility and all quarry operations occur exclusively in Westford, Massachusetts. The only entry or egress to the Facility, is located on North Main Street in Westford, Massachusetts.
- C. The Facility utilizes a private, semi-unpaved driveway for the transportation of aggregate materials, directly leading to North Main Street, Westford.
- D. The Facility has residential neighbors immediately next door to the Facility.
- E. On or about October 21, 2022, MassDEP received complaints of dust and visible emissions at the Facility impacting local residents and businesses.
- F. On December 9, 2022, MassDEP personnel and Westford Health Department personnel inspected the Facility. During this inspection, MassDEP personnel observed the following:
 - i. Respondent allowed trucks to create visible emissions into the ambient air when traveling across the private entrance to the Facility and public portions of North Main Street, impacting nearby residential properties. The Respondent therefore operated the Facility in violation of 310 CMR 7.01(1) General Regulations to Prevent Air Pollution which states, in part:

No person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminates, a condition of air pollution.
 - ii. The Respondent operated the Facility in a manner that caused a condition of air pollution, specifically a dust nuisance condition. The Respondent created the dust nuisance condition by allowing the truck traffic exiting the Respondent's Facility onto North Main Street to generate nuisance road dust into the ambient air. As such, MassDEP alleges that the Respondent operated the Facility in violation of the following regulations:

- a. 310 CMR 7.01 – General Regulations to Prevent Air Pollution, which states:

No person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution.

- b. 310 CMR 7.09(1) – Dust, Odor, Construction and Demolition, which states, in part:

No person having control of any dust or odor generating operations such as, but not limited to asphalt batching plants ... aggregate manufacturing plants ... concrete batching plants ... shall permit emissions therefrom which cause or contribute to a condition of air pollution.

- c. 310 CMR 7.09(4) Dust, Odor, Construction and Demolition, which states, in part:

No person shall cause, suffer, allow, or permit the handling, transportation, or storage of any material in a manner that results or may result in emissions therefrom which cause or contribute to a condition of air pollution.

- G. On April 10, 2023, MassDEP personnel and Westford Health Department personnel inspected the Facility. During this inspection, MassDEP observed the following:

- i. Respondent allowed trucks to create visible emissions into the ambient air when traveling across the private entrance to the Facility and public portions of North Main Street, impacting nearby residential properties. The Respondent therefore operated the Facility in violation of 310 CMR 7.01(1) General Regulations to Prevent Air Pollution which states, in part:

No person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution.

ii. The Respondent operated the Facility in a manner that caused a condition of air pollution, specifically a dust nuisance condition. The Respondent created the dust nuisance condition by allowing the truck traffic exiting the Respondent's Facility onto North Main Street to generate nuisance road dust into the ambient air. As such, MassDEP alleges that the Respondent operated the Facility in violation of the following regulations:

a. 310 CMR 7.01 – General Regulations to Prevent Air Pollution, which states:

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c. 310 CMR 7.09(4) Dust, Odor, Construction and Demolition, which states, in part:

No person shall cause, suffer, allow, or permit the handling, transportation, or storage of any material in a manner that results or may result in emissions therefrom which cause or contribute to a condition of air pollution.

6. On March 12, 2024, MassDEP issued a Notice of Enforcement Conference ("NOEC") to the Respondent setting a date to meet to discuss the violations listed in paragraphs II.5.A. through II.5.H. herein and MassDEP's requirements for coming into compliance.

7. On March 29, 2024, and April 5, 2024, representatives of the Respondent met virtually with MassDEP personnel to present the Respondent's response to the Notice of Enforcement Conference.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

8. The parties have agreed to enter into this Consent Order 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.
9. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.
10. Respondent shall perform the following actions:
 - A. Within sixty (60) days of the effective date of this Consent Order, **Respondent shall file electronically a completed AQ02 – Non-Major Comprehensive Plan Application (nmCPA) for the entire Facility.** The application and instructions can be found here: <https://www.mass.gov/how-to/cpa-process-comprehensive-plan-application-for-a-process-emissions-unit-aq-02-03>. The permit application fee for a AQ02 permit is \$2,370.00. **Respondent** shall pay such permit application fee in accordance with the instructions set forth in the permit application.
 - B. Respondent shall provide any additional information required by MassDEP on an application, without limitation, including that required by any Notice of Administrative or Technical Deficiency issued by MassDEP pursuant to 310 CMR 4.00, within thirty (30) days of the date of such notice or request.
 - C. Notwithstanding any other provision in this Consent Order, immediately upon the effective date of this Consent Order and until such time as the Respondent has obtained final approval of the nmCPA ("nmCPA Approval"), including the final resolution of any appeals to said nmCPA Approval, the Respondent may continue to operate the rock crushing, storage, and transport operations at the Facility. If the dust from the Facility cannot be mitigated, the Respondent will cease operating the Facility.
 - D. Notwithstanding any other provision in this Consent Order, immediately upon the effective date of this Consent Order and until such time as the Respondent has obtained its nmCPA Approval, including the final resolution of any appeals to said nmCPA Approval, the Respondent shall utilize a dust control management strategy to mitigate dust emissions from the Facility and shall include the use of an enclosed street sweeper with water on paved roads near the exit of the Facility; and the use of a water truck to spray water on the roadways within the Facility continuously throughout the hours the roadways are used and on the aggregate

piles, as necessary; provided, however, water truck or street sweeping operations are not required when it is raining or when freezing conditions would cause ice to accumulate on the roadways and create an unsafe condition.

- E. After obtaining the nmCPA Approval, Respondent shall operate the Facility at all times in compliance with said nmCPA Approval and with all applicable Air Regulations at 310 CMR 7.00, et seq.

11. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Edward J. Braczyk
Section Chief
Permitting
Bureau of Air and Waste
MassDEP Northeast Regional Office
150 Presidential Way, Suite 300
Woburn, MA 01801

Such notices, submittals, and other communications should be considered delivered by Respondent upon receipt by MassDEP.

12. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations, and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

13. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

14. The Commonwealth assesses a civil administrative penalty in the amount of Eighteen Thousand dollars (\$18,000.00) for the violations identified in Part II above, as follows:

- A. Respondent shall pay to the Commonwealth the sum of Nine Thousand dollars (\$9,000.00) as a civil administrative penalty for the violations identified in Part II above, according to the following schedule:

- 1. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the sum of Three Thousand dollars (\$3,000.00).

2. Within one hundred and twenty (120) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth an additional Three Thousand dollars (\$3,000.00).
3. Within two hundred and ten (210) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth an additional Three Thousand dollars (\$3,000.00).

This Consent Order establishes the schedule of payments and constitutes notice that the payments are due as described above. Except for the first payment, and solely for Respondent's convenience, billing notices may be sent to Respondent before each payment due date. All payments must be made according to the schedule and terms agreed upon in this Consent Order, regardless of whether Respondent receives billing notices. All payments made after the first payment must include the billing stub from the billing notice (if received by Respondent). Failure to make timely payments in accordance with the foregoing payment plan shall result in revocation of the payment plan. In such event, the entire remaining penalty amount, plus interest dating back to the default date, shall become immediately due to the Commonwealth.

B. MassDEP hereby agrees to suspend payment of the sum of Nine Thousand dollars (\$9,000.00); 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 the time period from the effective date of this Consent Order until such time as the Respondent has obtained a new final nmCPA Approval including final resolution of any appeals to said nmCPA Approval, Respondent shall pay to the Commonwealth the remaining amount of Nine Thousand dollars (\$9,000.00) 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.

15. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

16. This Consent Order may be modified only by written agreement of the parties hereto.

17. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

18. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

19. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

20. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

21. In addition to the penalty set forth in this Consent Order, if any (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

22. The Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended, or stipulated penalties and/or any associated fees. **The Respondent has four options for payment:**

- Option 1:** certified check;
- Option 2:** cashier's check;
- Option 3:** on-line payment using a credit card;
- Option 4:** electronic transfer.

Option 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, the 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 NOTE: DO NOT INCLUDE THE SIGNED ACOP WITH PAYMENT BY CHECK)

Option 3:

On-line 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)

On-line 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.

23. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

24. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

25. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

26. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

27. This Consent Order shall become effective on the date that it is executed by MassDEP.

SPECIAL INSTRUCTIONS:

Your two **signed copies of the Administrative Consent Orders** with Penalty (ACOP) must be delivered, for execution (signature) by MassDEP, to the following address:

John MacAuley, Deputy Regional Director, BAW
MassDEP
150 Presidential Way, Suite 300
Woburn, MA 01801

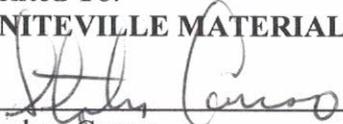
MassDEP will return **one signed copy** of the ACOP to you after MassDEP has signed, provided you have followed the above instructions.

Payment will be due, pursuant to the instructions outlined within the ACOP after you receive your fully executed copy.

PLEASE DO NOT INCLUDE YOUR PAYMENT WITH THE SIGNED ACOPs. SIGNED ACOPs ARE TO BE SENT TO THE ABOVE ADDRESS.

Please contact Helen Howard at 781-525-7436 if you have questions regarding payment and/or instructions.

Consented To:
GRANITEVILLE MATERIALS, LLC

By:  _____
Stephen Caruso
Manager
49 North Main Street
Westford, Massachusetts 01886
Federal Employer Identification No.:

Date: 5-20-24

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Eric Worrall
Regional Director
MassDEP
150 Presidential Way
Woburn, Massachusetts 01801

Date: