

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
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April 16, 2019

Gene Kelly
Harris Beach PLLC
677 Broadway
Albany, NY 12207

Re: Order on Consent
R4-2019-0226-14
Bruns Realty Group LLC

Dear Mr. Kelly:

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

This will also acknowledge receipt of \$4,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Malcolm



Department of
Environmental
Conservation

**STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of the Environmental Conservation Law (“ECL”) Article 17, 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.: R4-2019-0226-14

Bruns Realty Group LLC
108 2nd Street
Troy, NY 12181,

Respondent.

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with responsibility for the protection of water resources of the State, pursuant to ECL Article 17, and the rules and regulations promulgated thereunder at 6 NYCRR Part 750.

Respondent

2. Respondent, Bruns Realty Group LLC, is a New York State domestic limited liability company which owns the Net Zero Apartments complex located at 1020 Burdeck Street in Rotterdam, New York (“Facility”).

3. The Facility is subject to State Pollutant Discharge Elimination System (“SPDES”) Permit No: NY-0282316 (“Permit”) pursuant to 6 NYCRR 750-1.4(a), with an effective date of November 1, 2014 and an expiration date of October 31, 2024, as modified on November 1, 2017.

4. Respondent is a person as defined by ECL § 17-105(1).

BACKGROUND

5. The Facility is comprised of sixteen (16) apartment buildings containing a total of one hundred eighty (180) units, and a clubhouse.

6. Prior to completion of the Facility, Respondent sought a SPDES permit to authorize the construction and operation of an on-site Waste Water Treatment Plant ("WWTP"). The design of the WWTP was provided by Respondent's former engineering consultant, who also prepared the application for the SPDES permit. Respondent relied upon that consultant to provide a proper design that would adequately treat anticipated wastewater.

7. SPDES Permit NY-0282316 was issued to Respondent effective November 1, 2014, after which the WWTP was constructed on-site at the Facility and began operating in 2015.

8. The Permit included average and daily maximum flow limits of 11,500 gallons per day ("gpd") and 23,000 gpd, respectively, as well as effluent limits for five- (5) day Biochemical Oxygen Demand ("BOD"); Total Suspended Solids ("TSS"); and total nitrogen ammonia (as NH₃); as well as acidity/alkalinity.

9. The violations detailed below dating prior to 2018 resulted from the inability of the original WWTP to adequately treat the flows generated from the Facility.

10. As a consequence, Respondent retained a new engineering consultant and significantly upgraded the treatment capacity of the WWTP. This was accomplished at significant expense to Respondent.

VIOLATIONS

11. Respondent's on-site WWTP began to exceed the Permit's effluent limits almost immediately after it became operational in 2015.

12. On November 1, 2017, the Department granted Respondent a Permit modification to increase the average daily flow limit from 11,500 gpd to 15,000 gpd. Upgrades to the on-site WWTP were also undertaken and were completed in or about December 2017.

13. Respondent's WWTP continues to intermittently exceed the Permit's effluent limits. Since completing the upgrade of the WWTP, Respondent has submitted additional information concerning the WWTP's operations but has not yet thoroughly evaluated all factors bearing on the WWTP's ability to satisfy the Permit's effluent parameters.

14. The following is a summary of the WWTP Permit effluent limits and their exceedances, as observed to date¹:

¹ No flow data was collected between December 28, 2017 and March 28, 2018 due to a faulty flow meter and control panel.

Monitoring Period	Parameter	Limit	Result
September 2015	Ammonia (NH3)	10 mg/l	16 mg/l
December 2015	BOD	30 mg/l	55 mg/l
December 2015	Ammonia (NH3)	10 mg/l	28 mg/l
March 2016	BOD	30 mg/l	31 mg/l
March 2016	Ammonia (NH3)	10 mg/l	21 mg/l
September 2016	Flow (Avg.)	11,500 gpd	13,438 gpd
September 2016	Ammonia (NH3)	10 mg/l	13 mg/l
December 2016	Flow (Avg.)	11,500 gpd	12,096 gpd
December 2016	Ammonia (NH3)	10 mg/l	17 mg/l
March 2017	BOD	30 mg/l	46 mg/l
March 2017	Flow (Avg.)	11,500 gpd	13,050 gpd
March 2017	Ammonia (NH3)	10 mg/l	29 mg/l
June 2017	Flow (Avg.)	11,500 gpd	12,275 gpd
June 2017	Ammonia (NH3)	10 mg/l	20 mg/l
June 2017	TSS	30 mg/l	36 mg/l
September 2017	BOD	30 mg/l	36 mg/l
September 2017	Flow (Avg.)	11,500 gpd	15,229 gpd
September 2017	Ammonia (NH3)	10 mg/l	50 mg/l
December 2017	Ammonia (NH3)	10 mg/l	11 mg/l
September 2018	Flow (Avg.)	15,000 gpd	15,024 gpd
December 2018	BOD	30 mg/l	43 mg/l
December 2018	Ammonia (NH3)	10 mg/l	36 mg/l

15. ECL § 17-0511 states, “The use of existing or new outlets or point sources, which discharge sewage, industrial wastes or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.”

16. Regulation 6 NYCRR § 750-2.1(e) states that permittees “must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.”

17. Respondent’s exceedances of the Facility’s effluent limits are violations of ECL § 17-0511 and 6 NYCRR § 750-2.1(e).

Waiver of Hearing

18. 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

19. ECL § 71-1929(1) provides that: "A person who violates any of the provisions 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 to 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."

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

I. **Civil Penalty.** Respondent is hereby assessed a civil penalty in the amount of TWELVE THOUSAND DOLLARS (\$12,000), of which EIGHT THOUSAND DOLLARS (\$8,000) is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order and its Schedule of Compliance in a timely fashion. If Respondent fails to comply with such requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

The payable portion of the civil penalty, FOUR THOUSAND DOLLARS (\$4,000), shall be paid by bank check or company check made payable to the NYS Department of Environmental Conservation, which shall be sent along with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check to:

Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany NY 12233-4900

The executed Order on Consent (along with any applicable submissions) shall be sent to:

Department of Environmental Conservation
Region 4, Office of General Counsel
Attn: Stephen Repsher
1130 North Westcott Road
Schenectady, NY 12306

Alternatively, payment may be made electronically. Further information on electronic payment is located at: <http://www.dec.ny.gov/about/61016.html#On-Line>

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including all applicable items in the attached Schedule of Compliance. Any records submitted to the Department shall include the owner's name, facility name and address, contact name, and phone number.

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

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting under or controlled by it.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** 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, agents, successors or assigns.

VII. **Modification.** 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, such change to be made only upon written agreement of the parties.

VIII. **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 for the Department to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

X. **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 for any other violations of the ECL, rules or regulations promulgated thereunder;

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

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, 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.

XI. **Review of Submitted Documentation.**

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order 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 submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. Communications. Communications shall be sent to:

For Department:

New York State Department of Environmental Conservation
Region 4
1130 North Westcott Road
Schenectady, NY 12306
Attn: Regional Engineer

For Respondent:

Bruns Realty Group LLC
108 2nd Street
Troy, NY 12181
Attn: David Bruns

XIII. Termination. The Order shall terminate upon Respondent's full compliance with the terms, provisions and conditions of this Order including its Schedule of Compliance, including the requirement that Respondent demonstrate two (2) consecutive quarters of compliance with the Permit's effluent limits. Upon Respondent's demonstration of full compliance, as determined by the Department, the Department shall notify Respondent of the termination of the Order.

DATED: Rotterdam, New York
April 15, 2019

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

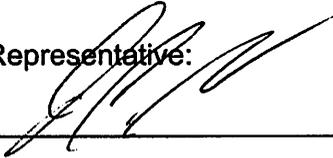
BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

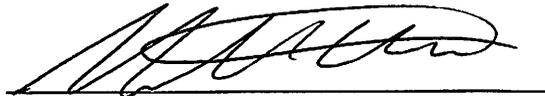
Respondent, Bruns Realty Group LLC, hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Authorized Representative: 
SIGNED: _____
TITLE: OWNER
DATE: 4/10/19

STATE OF NEW YORK)
COUNTY OF Rensselaer) ss.:

On the 10 day of April in the year 2019, before me, the undersigned, personally appeared David P. Bruns, personally known (Full name)

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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
Qualified in the County of: ~~Rensselaer~~ Albany[®]
My Commission Expires: 05/02/2020

Michael Brennan
Notary Public, State of New York
Qualified in Albany County
No. 01BR6341099
Commission Expires May 02, 2020

SCHEDULE OF COMPLIANCE

1. **Within ninety (90) days of the Effective Date of the Order**, Respondent shall complete and submit a Comprehensive Performance Evaluation (“CPE”). If the CPE demonstrates that the WWTP can adequately treat the flows and loadings generated by the Facility, it will not be necessary to develop a Composite Correction Program (“CCP”) for the onsite WWTP. If the CPE demonstrates that improvements, including process control changes and/or enhancements, are needed to ensure compliance, Respondent shall prepare and submit a CCP within thirty (30) days of the date of submission of the CPE.
 - a. The CPE and CCP shall be developed and conducted by a professional Engineer, licensed to practice in New York State, and shall consider, at minimum, the hydraulic and organic loadings on the system and the operation and maintenance practices.
 - b. The CCP shall include recommended improvements, including process control changes and/or enhancements, along with an implementation schedule to achieve consistent compliance with all SPDES permit requirements.

2. **Within sixty (60) days of the Effective Date of the Order**, Respondent shall submit to the Department an Operation & Maintenance Manual for the on-site WWTP that includes, at minimum:
 - a. Copy of the SPDES permit;
 - b. Operator and staff responsibilities;
 - c. operating logs compiled pursuant to the Permit;
 - d. An equipment inventory;
 - e. Facility contacts for emergency situations;
 - f. Process control and related monitoring for both treatment trains;
 - g. Process control diagrams;
 - h. Cold weather operations;
 - i. Preventive maintenance schedule, including pod sheet cleaning;
 - j. Health and safety considerations;
 - k. Standby power testing and maintenance;
 - l. Equipment manuals;
 - m. Alarms and controls;
 - n. Sample collection and quarterly completion of Discharge Monitoring Reports; and
 - o. As-built drawings.