

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 4441

July 16, 2013

Wayne Graff, Esq.
Graff Law, LLC
78 Main Street
P.O. Box 4148
Kingston, NY 12402

Re: Order on Consent
R4-2012-1030-103
GreenvilleLand, LLC

Dear Mr. Graff:

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

This will also acknowledge receipt of \$25,000 the civil penalty pursuant to Paragraph
I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: A. Dzierwa
K. O'Connor

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

In the Matter of the Alleged
Violations of Article 17 of the
Environmental Conservation Law
and Title 6 of the Official
Compilation of Codes,
Rules and Regulations of
the State of New York,

Order on Consent
R4-2012-1030-103

- by-

Camp Malka LLC
150 Ingalside Road
Greenville, NY 12083

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of the water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750, et seq.
2. Respondent, Camp Malka LLC, operates Camp Malka, a summer camp, formerly known as Camp Kochavim and Sport Star Academy, located on 160 Ingalside Road in the Town of Greenville, Greene County (facility). Greenville LLC is the title owner and landlord of Camp Malka.
3. Respondent was issued a State Pollutant Discharge Elimination System (SPDES) permit #4-1932-00096/00003, effective April 1, 2009, which expires on March 31, 2014.
4. The permit authorizes Respondent to discharge treated wastewater to an unnamed tributary which flows to Basic Creek (H-193-29-7-1) via outflow number 001.
5. On June 26, 2012, Department staff conducted an inspection and assigned Respondent with an unsatisfactory rating, pursuant to an inspection report submitted to the Respondent on June 27, 2012. Department staff requested that Respondent submit a formal schedule addressing corrective actions, however the requested information was never provided.

First Violation

6. The Waste Water Treatment Plant (“WWTP”) effluent discharges to the unnamed tributary which enters a decorative pond owned by a nearby neighbor.
7. On July 12, 2012, a release of partially treated sewage occurred which caused the neighbor’s pond to be discolored, odorous and contained solids and other floating substances attributable to a sewage discharge.
8. ECL 17-0501(1) provides that *“it shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.”*
9. The discharged sewage into the neighbor’s pond is a violation of ECL Section 17-0501(1).

Second Violation

10. The SPDES permit requires that the flow be monitored continuously and specifies a limit of 27,000 gallons per day.
11. To date, no flow meter has been installed at the WWTP.
12. Respondent’s failure to install a flow meter at the WWTP is a violation of Respondent’s SPDES permit.

Third Violation

13. The SPDES permit requires that annual reports for the site be submitted to the Department’s Regional Water Engineer for 2011 and 2012.
14. To date, the 2011 and 2012 annual reports for the site have not been submitted to the Department.
15. Respondent’s failure to submit to the Department, annual reports for 2011 and 2012, is a violation of Respondent’s SPDES permit.

Fourth Violation

16. The SPDES permit limits the biological oxygen demand parameter to a maximum of 5 mg/L monthly average.
17. On July 19, 2012, Respondent reported a value of 9.4 mg/L.
18. On July 31, 2012, Respondent reported a value of 15 mg/L.

19. The SPDES permit limits the total suspended solids parameter to a maximum of 10 mg/L monthly average.
20. On July 19, 2012, Respondent reported a value of 14 mg/L.
21. On July 31, 2012, Respondent reported a value of 28 mg/L.
22. Respondent's exceedance of the maximum SPDES permit parameters are violations of the SPDES permit.

Civil Penalty

23. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 through 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.

Waiver of Hearing

24. Respondent affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order on Consent and agrees to be bound by the terms, provisions, and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Civil Penalty

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

With respect to the aforesaid alleged violation, a civil penalty in the amount of THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) is hereby assessed against the Respondent of which TWENTY FIVE THOUSAND DOLLARS (\$25,000) shall be payable to the New York State Department of Environmental Conservation by money order or certified check at the time this Order is signed, notarized and returned to the Department. The balance TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500) 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. Settlement and Reservation of Rights

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning SPDES permit violations that pre-date the effective date of the Order and the violations described in the Motion for Summary Order.

B. Except as provided in Subparagraph III.A of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

III. Schedule of Compliance

The attached Schedule of Compliance is incorporated into the Order on Consent.

IV. Force Majeure

Respondent shall not be in default of compliance with this Order if it is unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war, strike, riot or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify DEC in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

V. Communications

All communications required herein shall be made to:
Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Water Engineer.

VI. Access

Respondent shall allow duly authorized representatives of DEC and NYC DEP access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC and NYC DEP to inspect and determine the status of Respondent's compliance with this Order or the ECL.

VII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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.

VIII. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.
2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 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 so 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 of the Department's stated reasons for disapproving the first submittal.
 - b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission 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 submission 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.

IX. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent.

X. 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.

XI. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification,

schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

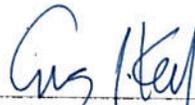
XII. Effective Date

The effective date of this Order shall be the date it is signed by the Department.

Dated: 7/15, 2013
Rotterdam, NY

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Camp Malka LLC

BY: 

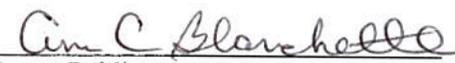
AARON KAPLAN

TITLE: AUTHORIZED OFFICER

DATE: JULY 10, 2013

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

On the 11 day of JULY in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared AARON KAPLAN, 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: Greene
My Commission Expires: 2016

ANN C. BLANCHETTE
Notary Public, State of New York
Qualified in Greene County
Commission No. 6190780
Commission Expires August 4, 2016

Schedule of Compliance

1. By August 15, 2013, Respondent shall install a permanent flow meter at the effluent of the WWTP as specified on the Department approved plans. A review of the system for the presence of bypasses shall be conducted and all such valves shall be removed. All septic and process tanks shall be emptied, cleaned, and inspected. A fence shall be installed around the perimeter of the WWTP along with a locked entrance gate.
2. By August 15, 2013, Respondent shall provide as-built plans to the Department and have a set available at the waste treatment plant. If as-built plans cannot be provided, Respondent shall hire a New York State licensed Professional Engineer to evaluate the system in its current state and certify that the system was constructed in accordance with the Department approved plans.
3. By August 15, 2013, Respondent shall install backup power sufficient to operate the entire system during power outages. All existing metal manhole covers shall be modified or replaced to make routine access easier for plant staff.
4. By August 15, 2013, Respondent shall submit to the Department, an engineering report prepared by a New York State licensed professional engineer addressing the facility non-compliance and improving plant operation. The report shall include the following at a minimum:
 - a. A summary of all plant upset conditions and their cause.
 - b. A summary of water usage and septage generation.
 - c. An evaluation of the current alarm system and a list of upgrades that may be necessary to ensure a timely response.
 - d. An updated O&M Manual for the waste treatment plant including a spare parts inventory. This shall include procedures for shutting down the treatment plant at the end of the camp season including the cleaning and inspection of septic/process tanks.
 - e. A contingency plan for routine monitoring of off-site properties and emergency response procedures.
 - f. A schedule for completing the above work.
5. By August 15, 2013, Respondent shall submit to the Department, a start-up plan prepared by a New York State licensed professional engineer. The start-up plan shall include a comprehensive evaluation of the wastewater treatment plant in order to ensure that the plant will meet permit effluent limits. A weekly sampling plan for the first six weeks of operation shall be included.
6. Until a start-up plan is approved by the Department and implemented, Respondent shall hold and haul sewage generated from the facility. All waste shall be transported for proper disposal utilizing a septage hauler permitted under 6 NYCRR Part 364. Respondent shall submit to the Department on a weekly basis, hold and haul receipts from the hauler showing the date, amount pumped, and the destination.
7. By August 15, 2013, Respondent shall submit to the Department, the Annual Report required by the SPDES permit. The report shall be submitted to the Regional Water Engineer with all data collected during CY 2012.

Once approved by the Department, the plan and schedule will become enforceable under the terms of this Order. The plan shall be developed with the goal of having the WWTP fully functional and in compliance with the SPDES permit.