

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

December 17, 2013

Mark A. Babilonia, Esq.
1429 County Hwy. 4
Otego, NY 13825
markbabilonia@frontiernet.net

Re: Cooperstown Brewing Company
Order of Consent
R4-2013-1004-119

Dear Mr. Babilonia:

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

This will also acknowledge receipt of \$2000 the civil penalty pursuant to Paragraph I.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: J. Fraine
P. Innes
M. Clark
K. O'Connor
M. Isaacson

State of New York Department of Environmental Conservation

In the Matter of the
Violations of Environmental
Conservation Law Articles 17 and 24 by:

ORDER ON CONSENT

File No.
R4-2013-0930-119

Cooperstown Brewing Company
River Street
Milford, New York

Respondent

WHEREAS:

1. The Department of Environmental Conservation (“Department” or “DEC”) is the state agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law (ECL). In particular, the Department has administrative jurisdiction to protect and conserve freshwater wetlands and the benefits derived there from pursuant to ECL Article 24 and is charged with administration of the State Pollutant Discharge Elimination System (“SPDES”) and with the authority to maintain the cleanliness and purity of such waters, pursuant to Article 17, Title 8 of the ECL.
2. Respondent, Cooperstown Brewing Company, operates a brewery on River Street, Milford, New York (“facility” or “site”). The facility was purchased by the Respondent in 2011. The facility was issued a SPDES permit (Number 0249505) that expired in January 1, 2005 for a subsurface sewage system (“former permit”). The former permit authorized the use of two septic tanks, a dosing tank and one leach field. A second leach field was apparently installed by the former owner, without approval from the Department, sometime between 1995 and 2011. The Department accepted SPDES permit annual fees in 2011 and 2012 of \$600 from the Respondent as if the permit was in effect. Based on the equities of this situation, the Department will not assert that Respondent operated without a SPDES permit because it has committed in this Order to bring its system into compliance and apply for a SPDES permit.
3. On or about June 9, 2013, Respondent alleges that a delivery truck ran over its leach field causing a surface discharge and Respondent alleges it did not become aware of the damage to the leach field until the end of July 2013 when an odoriferous smell was reported by Respondent’s neighbor.
4. On September 10, 2013, Department staff inspected the facility and detected an odoriferous smell and observed evidence of a surface discharge from the leach field.

5. Freshwater wetland #MI-13("wetland") borders the southern boundary of the site and its 100 foot adjacent wetland area extends northerly into the site. ("adjacent area").

Freshwater Wetland Regulations

6. On September 25, 2013, Department staff inspected the site and observed the removal of soils from the adjacent area alongside River Street. Respondent alleges the soils were removed from an existing swale

7. On October 9, 2013, Department staff inspected the site and observed that Respondent had filled in the area alongside River Street in the adjacent area with gravel covering a pipe laid underneath the gravel fill.

8. Respondent alleges that it constructed the ditch and laid the pipe to collect surface water runoff along River Street and properties adjacent to Respondent's northern boundary. .

9. Respondent possessed no permit for the dredging and filling of the adjacent area.

10. Regulations at 6 NYCRR 663.4(d) (20) and (26) prohibit the filling and dredging in the adjacent area without a permit, respectively.

11. Respondent's filling and dredging of the wetland are violations of 6 NYCRR 663.4(d) (20) and (26).

Discharge from Leach Field

12. On September 10, 2013, the site's subsurface disposal system discharged to the surface in violation of the conditions of the former owner's SPDES permit.

13. ECL Section 17-0803 provides that: "Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit."

14. The surface discharge from the subsurface disposal system is a violation of ECL Section 17-0803.

Waiver of Hearing

15. 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 agrees to be bound by the terms, provisions and conditions contained herein.

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

I. Respondent, is hereby assessed a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4000) for the violation stated herein. TWO THOUSAND DOLLARS (\$2,000) of the civil penalty is due with the return of the signed and notarized Order to the Department. Payment of the civil penalty shall be made by bank check made payable to the Department of Environmental Conservation. TWO THOUSAND DOLLARS (\$2000) of the civil penalty is suspended conditioned on Respondent's compliance with Paragraph 2 of the Order's Schedule of Compliance. The suspended penalty shall be due and payable within 10 calendar days of receipt of a Notice of Violation from the Department setting forth the violation of Paragraph 2.

II. The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent with a fully executed of this Order as soon as practicable after the Commissioner or a designee signs it.

III. 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.

IV. Respondent shall comply with this Order including the Schedule of Compliance and the provisions of this Order shall be deemed to bind Respondent and its officers, directors, agents, employees, contractors, successors and assigns, and all person, firms and corporations acting under or for it.

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

VI. Upon completion of all obligations created in this Order, this Order settles all claims for civil penalties concerning the violations and activities described herein and known to the Department as of the effective date of the Order.

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

VIII. Respondent shall indemnify and hold harmless the Department, the State of New York, and its 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 this Order by Respondent and its successors (including successors in title) and assigns.

IX. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the facility in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order.

X. All reports or information required by this Order shall be mailed to the Region 4 Office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Engineer.

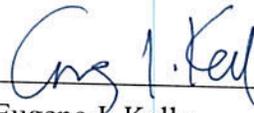
XI. The Order shall terminate upon the Department's determination that Respondent has timely complied with all the terms, conditions and provisions of the Order including the Schedule of Compliance.

XII. This Order is made strictly for the purposes of the Department, the State of New York and the United States Environmental Protection Agency and is not intended for use by any third party.

DATED: 12/16, 2013
Rotterdam, New York

BY:

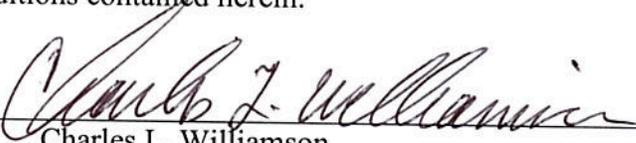
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in blue ink, appearing to read "Eugene J. Kelly", is written over a horizontal line.

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

BY: 
Charles L. Williamson

TITLE: Managing Member

DATE: December 10, 2013

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

On the 10th day of December in the year 2013, before me, the undersigned, personally appeared Charles L. Williamson personally known to me who, being duly sworn, did depose and say that he resides at 4021 State Highway 51, Garrattsville, NY 13342, and that he is the managing member of Cooperstown Brewing Company, LLC, the entity described in and which executed the above instrument; and that he signed his name thereto by the authority granted under the Articles of Organization and Operating Agreement of the LLC.


Notary Public, State of New York

MARK A. BABILONIA
Notary Public, State of New York
No. 02BA5070920
Qualified in New York County
Commission Expires Jan. 6 2015

Schedule of Compliance

1. By December 15, 2013, Respondent shall mark or temporarily fence the area of the subsurface disposal system around the eastern quadrant of Absorption Field Number 2 to prevent vehicles from driving over it.
2. By December 30, 2013, Respondent shall remove the gravel fill and the pipe from the ditch within the wetland and its adjacent area. Heavy machinery, if used, shall be placed on mats when within 30' of the wetland boundary.
3. January 15, 2014, Respondent shall submit to the Department for review and approval an engineering report and plans prepared by a New York State licensed professional engineer for the construction of a wastewater disposal system that meets design and effluent discharge standards for brewery and sanitary waste water. The design shall be capable of meeting, at a minimum, advanced pre-treatment reductions of BOD₅ and TSS waste loads to conventional strength sanitary waste prior to its subsurface disposal. The work in the Department approved engineering plan shall be completed by no later than July 1, 2014 unless Respondent provides the Department with written notification prior to July 1, 2014 that it is permanently ceasing the discharge from the subsurface disposal system. After July 1, 2014, Respondent and a successor interest shall complete the work in the Department approved engineering plan prior to recommencing a discharge from the subsurface disposal system ..
4. Respondent shall within 15 calendar days of completing the construction of the new or upgraded disposal system, submit to the Department a final certification that the system is installed in accordance with the Department approved design plans.
6. A fence shall be constructed around the subsurface disposal system above the eastern quadrant of Absorption Field Number 2 containing Infiltrators, as delineated on the Existing Wastewater System plan prepared by James Forbes, P.E. in accordance with paragraph 3, above, upon completion of construction and prior to the commencement of operation.