

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the 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 (6 NYCRR)

ORDER ON CONSENT

- by -

DEC Case
R4-2008-0711-108

Jude and Rose Watkins
254 Bridge Street
Selkirk, NY 12158

Respondents

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WHEREAS:

1. Pursuant to Environmental Conservation Law ("ECL") Article 17, 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, DEC regulates the discharge from point sources, as that term is defined at 6 NYCRR §750.2(a) (20), pursuant to ECL §17-0101 *et seq.* 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 (NYCRR), Part 750 *et seq.*
2. Respondents, Jude and Rose Watkins, own and operate Hillcrest Mobile Home Park ("Hillcrest MHP") at 3868 Western Turnpike, Duanesburg, New York 14423 which was formerly operated by Hillcrest Commons MHP LLC pursuant to Order on Consent R4-2007-0912-115 (effective October 23, 2007) and Modification of Order on Order R4-2007-0912-115 (effective May 29, 2008). Hillcrest MHP contains thirty-five mobile homes. The Respondents purchased the Hillcrest MHP from Hillcrest Commons MHP LLC and have committed by this Order on Consent to upgrade the Hillcrest MHP waste water treatment plant ("WWTP") in accordance with the Schedule of Compliance and to apply for and operate under a SPDES permit. The previous SPDES permit for this facility has expired.
3. Respondents have affirmatively waived their right to notice and hearing in the manner provided by law, has consented to the issuance and entry of this Order, and agree to be bound by the terms, provisions and conditions contained herein.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. Schedule of Compliance

The attached Schedule of Compliance supercedes the Order's Schedule of Compliance and is enforceable hereunder.

II. 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.

III. Communications

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

All communications required herein to the Respondent shall be made to: Jude and Rose Watkins c/o of Dominick J. Brignola, Esq., 350 Northern Boulevard, Suite 306, Albany, New York 12204.

IV. Access

Respondent shall allow duly authorized representatives of DEC 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 to inspect and determine the status of Respondent's compliance with this Order or the ECL.

V. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative 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 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.

VII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VIII. 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.

IX. 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.

X. Effective Date

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

XI. Reservation of Rights

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 may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns; and

C. 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.

XII. Multiple Respondents If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: July 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

BY: _____
Jude Watkins

DATE: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the ____ day of ____ in the year _____ before me personally came to me known, who, being by me duly sworn, did depose and say that s/he resides in _____; that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporation.

Notary Public
Signature and Office of individual taking acknowledgment

CONSENT BY RESPONDENT

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

BY: _____
Rose Watkins

DATE: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the ____ day of ____ in the year _____ before me personally came to me known, who, being by me duly sworn, did depose and say that s/he resides in _____; that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporation.

Notary Public
Signature and Office of individual taking acknowledgment

Schedule of Compliance

- 1) Within 10 days of the effective date of this Order, Respondent shall submit to the Department a SPDES permit application and engineering plans for the WWTP prepared by a New York Professional Licensed Engineer (“engineering plan”).
- 2) Within 10 days of the Department’s approval of the engineering plan, Respondent shall commence construction of the upgrade of the WWTP in accordance with the Department approved engineering plan.
- 3) By December 31, 2008, Respondent shall complete all work required by the engineering plan and submit an engineer’s certification to the Department attesting that the system was constructed in accordance with the approved plans. Respondent may request a 30 day extension to this date by a written request to the Region 4 Regional Water Engineer. The extension will take effect when confirmed in writing by the Region 4 Regional Water Engineer.
- 4) Respondent shall maintain the existing condition and operating efficiency of the WWTP until all upgrades required by the engineering plan are completed or hold and haul.
- 5) Compliance with this Schedule of Compliance and implementation of the engineering plan shall not be defenses to any subsequent violations of the WWTP’s SPDES plant or the ECL and regulations promulgated thereunder.
- 6) Respondent shall provide the Department with monthly reports by the 10th calendar day of the following month of operation discussing the status of the construction at the WWTP.