

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
7017 1070 0001 0125 7896

July 9, 2019

Rick Sedotto, Vice President of Operations
Midland Farms, Inc.
375 Broadway
Menands, NY 12204

Re: Order on Consent
R4-2019-0522-30

Dear Mr. Sedotto:

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

This will also acknowledge receipt of the \$25,700 civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

cc: M. Barrie
Thomas Walsh, Esq.



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
R4-2019-0522-30

Midland Farms, Inc.
375 Broadway
Menands, NY 12204,

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, Midland Farms, Inc. (“Respondent”), is a domestic business corporation with a principal executive office located at 375 Broadway in the Village of Menands, New York.

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

Background

4. On November 3, 2016, the Albany County Water Purification District conducted an investigation, which included a dye test, at Respondent’s facility located at 375 Broadway in Menands, New York (the “Facility”), in response to complaints from nearby property owners of cloudy / milky discharges and odors in the waters of a stormwater drainage ditch along East Elmwood Road, adjacent to the Facility.

5. The 2016 investigation concluded that the Facility’s loading dock area catch basin discharges through a culvert to the drainage ditch.

6. At the time of the 2016 inspection, Department staff's understanding was that the Village of Menands was working with the Facility to address the drainage issues, since the stormwater drainage system is part of the Village of Menand's regulated Municipal Separate Storm Sewer System.

7. On February 15, 2019, prompted by continued complaints from adjacent property owners, an Environmental Conservation Officer ("ECO") Kurt Bush and Village of Menands Clerk Don Handerhan conducted a site investigation and observed that the East Elmwood Road drainage ditch was full of white water and producing foul odors from discharge that appeared to originate from Respondent's milk waste wash water.

8. Based on the February 15, 2019 investigation, ECO Bush issued several administrative tickets, and the Village Code Enforcement Office issued a notice of violation ("NOV") which included several required and recommended remedial actions to address the drainage issues.

9. On February 22, 2019, in response to the NOV from the Village, Respondent stated that Respondent had contacted an engineering firm to "review the NOV, determine any action required and forward a compliance plan."

10. On both April 4, 2019 and April 24, 2019, Department staff from the Division of Water conducted site investigations in response to two further complaints on those dates and identified continued cloudy / milky water and foul odors in the subject drainage ditch. Furthermore, Department staff observed no corrective action taken by Respondent in response to the administrative tickets and NOV issued based on the February 15 investigation.

11. Following the April 4, 2019 and April 24, 2019 inspections, Department staff determined that the drainage ditch flows into surface waters of the state which are designated as a Class "C" tributary of the Hudson River (Water Index Number H-233).

12. Upon information and belief, Respondent's Facility operates under Standard Industrial Classification ("SIC") code 2026 (Fluid Milk).

13. Stormwater discharges to surface waters of the State from a facility operating under SIC code 2026 must be covered under the State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater discharges Associated with Industrial Activity ("MSGP").

VIOLATIONS

Water Quality Violation

14. ECL § 17-0501(1) states, "It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into [the waters of the State] 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.”

15. Regulation 6 NYCRR § 703.2 sets forth the narrative water quality standards adopted by the Department pursuant to ECL § 17-0301 and, in relevant part, prohibits the discharge of any pollutants “in amounts that will adversely affect the taste, color or odor [of a classified water body].”

16. Respondent’s persistent and unremedied discharges of cloudy and/or milky, foul-smelling effluent to a drainage ditch which feeds into a Class “C” tributary to the Hudson River violate ECL § 17-0501(1) and regulations at 6 NYCRR § 703.2.

SPDES Violation

17. ECL § 17-0803 provides, in relevant part, that “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.”

18. Regulation 6 NYCRR § 750-1.4 provides, in relevant part, that “no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL article 17, title 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.”

19. Respondent’s failure to obtain coverage under the SPDES MSGP is a violation of ECL § 17-0803 and regulations at 6 NYCRR § 750-1.4.

Waiver of Hearing

20. 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

21. 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 TWENTY-FIVE THOUSAND, SEVEN HUNDRED DOLLARS (\$25,700). The civil penalty 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 the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. 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 due process and 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, including the enforcement of this Order; 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. The existence of this Order shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

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 greater of thirty (30) days or 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 to achieve compliance with this Order. 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:

Midland Farms, Inc.
Attn: Rick Sedotto, VP of Operations
375 Broadway
Menands, NY 12204

With a copy to:

Thomas F. Walsh, Esq.
Barclay Damon LLP
2000 Five Star Bank Plaza
100 Chestnut Street
Rochester, NY 14604

DATED: Rotterdam, New York
July 8, 2019

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent, Midland Farms, Inc., 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.

SIGNED: Richard Sedotto
TITLE: VP of Operations
DATE: 7-3-19

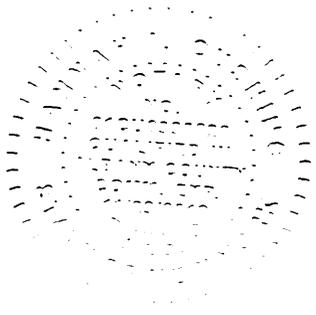
STATE OF NEW YORK)
COUNTY OF Albany) ss.:

HANNAH I. CUSHING
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01CU6332626
QUALIFIED IN ALBANY COUNTY
MY COMMISSION EXPIRES 11-23-2019

On the 3 day of July in the year 2019, before me, the undersigned, personally appeared Richard Sedotto, 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.

Hannah Cushing
Notary Public
Qualified in the County of: Albany
My Commission Expires: 11/23/19



SCHEDULE OF COMPLIANCE

1. **Within twenty (20) days of the effective date of this Order**, Respondent shall submit to the Department a written statement setting forth in reasonable detail the actions Respondent has taken to correct the violations cited above and to prevent further contravention of water quality standards. The written statement shall also indicate the Standard Industrial Classification (SIC) code(s) under which the Facility operates.

2. If applicable based on Respondent's SIC code(s), **within ninety (90) days of the effective date of this Order**, Respondent shall obtain authorization under the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004) in accordance with the requirements of the permit; or, alternatively, Respondent shall obtain the Conditional Exclusion of No Exposure by submitting to the Department a certification of no exposure.

NOTE: Compliance with the terms and conditions of this Schedule of Compliance shall not be a defense to subsequent violations.