

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
7016 0340 0000 4616 7939

September 16, 2016

Chip Seamans
President/General Manager
Ski Windham
19 Resort Drive
Windham, New York 12496

Re: Order on Consent
R4-2015-0722-131

Dear Mr. Seamans:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: J. McCullough



Department of
Environmental
Conservation

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17
And 6 NYCRR Part 750

ORDER ON CONSENT

File No. R4-2016-0722-131

-by-

Ski Windham Operating Corp.

WHEREAS:

1. The Department of Environmental Conservation (“Department” or “DEC”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereto, including Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”). The United States Environmental Protection Agency (“EPA”) has approved the New York State Pollution Discharge Elimination System (“SPDES”) to implement the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit program that includes the regulation of stormwater discharges from the disturbance on one acre of land or more.

Respondent

2. Respondent, Ski Windham Operating Corp., is the owner and operator of Ski Windham also known as (Windham Mountain), a ski resort, located at 19 Resort Drive, Windham, New York 12496, Greene County (“Site”).

3. 6 NYCRR Subpart 750-1.2(a)(64) defines the term “person” or “persons” as “any individual, public or private corporation, political subdivision, government agency, municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever.” Respondent is a person pursuant to 6 NYCRR Subpart 750-1.2(a)(64).

4. Respondent is a person pursuant to 6 NYCRR Subpart 750-1.2(a)(64).

Stormwater Regulations and General Permit

5. EPA’s regulations for the permitting of stormwater discharges are found at 40 CFR §122.26.

6. Pursuant to Section 402 of the Clean Water Act (“CWA”), stormwater discharges from certain construction activities are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit or by a state permit program.
7. New York’s State Pollutant Discharge Elimination System (“SPDES”) program is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (“ECL”).
8. ECL §17-0501 states “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. ECL §17-0803 states “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. The department shall, by rule and regulation, require that every applicant for a permit to discharge pollutants into the waters of the state shall file such information at such times and in such form as the department may reasonably require to execute the provisions of this article. Rules and regulations adopted hereunder may provide that in lieu of issuance of such permit the department may accept as compliance herewith a permit duly issued by the federal government or an agency thereof pursuant to the provisions of the Act.”
10. Department regulations at 6 NYCRR Subpart 750-1.4(b) require that stormwater discharges from construction activities require a permit issued in accordance with 40 CFR §122.26.
11. Department regulations at 6 NYCRR Subpart 750-1.21(b)(2) authorize “a general permit for ... Stormwater from construction activities as defined under 40 CFR 122.26(b)(14) (x) (see section 750-1.24 of this Part)”.
12. The Department issued a SPDES General Permit for Stormwater Associated with Construction Activity (GP-0-15-002), effective January 29, 2015, that is consistent with the federal permit requirements under 40 CFR §122.26 (“General Permit”).
13. The General Permit states “This permit authorizes stormwater *discharges* to *surface waters of the State* from the following *construction activities* identified within 40 CFR Parts 122.26(b)(14)(x), 122.26(b)(15)(i) and 122.26(b)(15)(ii), provided all of the eligibility provisions of this permit are met: *Construction activities* involving soil disturbances of one (1) or more acres”. General Permit at Part I(A).

Violation

14. Respondent conducted construction activities at the Site which will disturb more than one acre of soil.

15. Respondent was not covered by the General Permit prior to commencement of construction activities at the Site which will disturb more than one acre of soil.

16. The Respondent's failure to obtain coverage under the General Permit prior to commencement of construction activities at the Site which will disturb more than one acre of soil is a violation of 6 NYCRR Part 750-1.4(b).

Civil Penalty

17. ECL Section 71-1929 states that "Any person who violates any provision of Article 17 shall be liable for a penalty of up to thirty seven thousand five hundred dollars (\$37,500) per day for each violation."

Waiver of Hearing

18. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuance of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

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

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of EIGHT THOUSAND DOLLARS (\$8,000) of which ONE THOUSAND DOLLARS (\$1,000) 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. SEVEN THOUSAND DOLLARS (\$7,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. Respondent shall comply with the attached Schedule of Compliance which is incorporated into the Order and is enforceable thereunder.

III. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. This Order is binding upon the Respondent and shall inure to its benefit and that of its successors and assigns. Respondent is responsible for ensuring that its agents,

its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto comply with terms and conditions thereof.

V. All communications except where otherwise specifically directed should be sent as follows:

To the Department at:

Jeffrey McCullough
New York State
Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

Please include the name and address of the facility as well as the permit number for the facility.

And to the Respondent at:

Chip Seamans
President/General Manager
Ski Windham
19 Resort Drive
Windham, New York 12496

VI. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Order because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provided, however, that the Respondent notifies the Department in writing within 5 days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

VII. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VIII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question without prior notice 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, and the ECL and regulations promulgated thereunder.

IX. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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, servants, agents, successors or assigns.

X. 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, its officers, directors, agents, servants, employees, successors and assigns;

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

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

A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. (1) If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

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

XIII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

XVI. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department, State, or Respondent.

DATED: September 16, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State
Department of Conservation

BY: 
Keith Goetz
Regional Director
Region 4

Schedule of Compliance

1. Respondent shall immediately stabilize all area of disturbance as deemed necessary by a qualified professional/engineer to prevent potential impacts to water quality.
2. Respondent shall immediately install erosion and sediment controls as deemed necessary by a qualified professional/engineer to prevent potential impacts to water quality.
3. Within 20 days from the effective date of this Order, Respondent shall submit to Department staff a statement that the activities in Paragraphs 1 and 2 above have been completed.
4. Prior to commencing additional construction activity that will involve soil disturbance of one or more acres, Respondent shall obtain coverage under the Department's Construction Stormwater General Permit.