

**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**

7015 0640 0000 2327 0308

October 22, 2015

William Biers  
WM. Biers, Inc.  
100 Port Road  
Albany, NY 12202

Re: Order of Consent  
R4-2015-0918-109

Dear Mr. Biers:

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

This will also acknowledge receipt of \$3,750 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: M. Barrie



Department of  
Environmental  
Conservation

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

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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  
R4-2015-0918-109

- by-

WM. Biers, Inc.  
100 Port Road  
Albany, NY 12202

Respondent

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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, WM. Biers, located at 100 Port Road, Albany, NY 12202, owns and operates a business involving the wholesale of landscaping materials and landscape equipment sales.
3. Respondent is a "person" as that term is defined at 6 NYCRR 750-1.2(a)(64).
4. The Multi-Sector General Permit ("MSGP") identifies categories of industrial activities consistent with Standard Industrial Classification ("SIC") codes, industrial activity codes, as needing a stormwater permit.
5. The facility does perform several activities that would require MSGP coverage if it was their primary SIC code like composting, wood chipping for mulch and recycling. These activities are used to support their primary SIC code. Since these activities are not their primary SIC code, by rule, this facility does not require MSGP coverage. However, after Department staff's May 15, 2015 and May 22, 2015 inspections, it was determined that they

are conducting in conjunction with the retail operation, therefore should be authorized under Sector N and Sector P as a co-located activity.

6. Therefore, Respondent failed to have MSGP coverage in accordance with Sectors N and P.

#### Civil Penalty

7. 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

8. 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 of the aforesaid alleged violations, a civil penalty in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750) 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.

#### 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:

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: *October 22* 2015  
Rotterdam, NY

Marc Gerstman  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
Keith Goertz  
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.

WM. Biers, Inc

BY: [Signature]

TITLE: President

DATE: 10-15-15

STATE OF NEW YORK )

COUNTY OF Stanton )ss.:

On the 15<sup>th</sup> day of October in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared William Biers, 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.

[Signature]

Notary Public  
Qualified in the County of: STANTON  
My Commission Expires: 6-26-2019

CHARLES J. OLIVER  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: 6-26-2019

### Schedule of Compliance

1. Within 60 days of the effective date of this Order, Respondent shall prepare a SWPPP which provides for compliance with the terms of the MSGP and upon completion of the SWPPP, Respondent shall submit a complete Notice of Intent to the Department under the MSGP. A copy of the SWPPP shall be provided to the Department.