

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 9081

November 26, 2018

Thomas M. Armao
C.O.D. Realty Corp.
70 Oneida Street
Oneonta, NY 13820

Re: Order on Consent
R4-2018-0904-180

Dear Mr. Armao:

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

This will also acknowledge receipt of \$3,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: C. Van Maaren
M. Barrie



Department of
Environmental
Conservation

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

In the Matter of Violations of the Environmental Conservation Law ("ECL") Article 24, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

-by-

ORDER ON CONSENT

R4-2018-0904-180

C.O.D. Realty Corp.
70 Oneida Street
Oneonta, New York 13820

Respondent.

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation ("Department") is a department of the State of New York which is authorized to preserve, protect, and conserve freshwater wetlands and the benefits derived therefrom under the Environmental Conservation Law ("ECL"). Specifically, the Department regulates and controls the water resources of the state pursuant to ECL Article 24, and the rules and regulations promulgated, in part, under Title 6 of the New York Code of Rules and Regulations ("6 NYCRR"), Part 663.

Respondent

2. Respondent, C.O.D. Realty Corp., is a domestic business corporation which owns a parcel of property located at 82 Oneida Street in Otsego County, New York, and identified as Otsego County Tax Parcel 299.10-1-1.01 ("Site").

3. The Site owned by Respondent includes an area classified as a Class 1 protected freshwater wetland, identified by the Department as New York State Regulated Freshwater Wetland ON-4, as well as wetland adjacent area.

4. Respondent is a person as defined at 6 NYCRR § 663.2(w).

VIOLATIONS

5. On May 8, 2018, Department staff inspected the Site and observed that fill material appeared to have been recently dumped at the Site owned by Respondent, on a parcel of land located within a portion of wetland (ON-4) immediately south of the parking lot at Country Club Motors, 82 Oneida Street, in Oneonta, New York.

6. Respondent also owns the adjacent parcel of land occupied by Country Club Motors.
7. On June 6, 2018, Department staff conducted a second Site inspection and observed that fill material had been deposited primarily into the wetland proper, but also within regulated adjacent area.
8. "Adjacent area" is defined at 6 NYCRR § 663.2(b) as "those areas of land or water that are outside a wetland and within 100 feet (approximately 30 meters), measured horizontally, of the boundary of the wetland."
9. During the June 6, 2018 inspection, Department staff determined that the fill material extends from the edge of impact in the wetland adjacent area approximately forty-five to fifty (45-50) feet to the northwest and into the wetland.
10. Regulation 6 NYCRR § 663.4(a) states in relevant part that "[a]ll persons proposing to conduct, on wetlands or adjacent areas, activities which have not been specifically exempted . . . must obtain either a permit or a letter of permission."
11. Regulation 6 NYCRR § 663.4(d) sets forth various activities for which a permit is required in regulated freshwater wetland areas prior to engaging in those activities.
12. With regard to activities conducted by Respondent, a permit is required for: "Filling, including filling for agricultural purposes" (6 NYCRR § 663.4(d) at Item 20);
13. ECL § 24-0701(1) states, in relevant part, that "any person desiring to conduct on freshwater wetlands . . . any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title."
14. ECL § 24-0701(2) identifies regulated activities as including: ". . . any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly."
15. By causing and/or allowing fill to be deposited in a wetland and adjacent area without a permit, Respondent violated 6 NYCRR § 663.4 and ECL § 24-0701.

Civil Penalty

16. ECL § 71-2303(1) provides that any person who violates any provision of Article 24 of the ECL, or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty not to exceed \$11,000 for every such violation, and may be required to restore the affected freshwater wetland to its condition prior to the violation.

Waiver of Hearing

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

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

I. **Civil Penalty.** Respondent is hereby assessed a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by money order, or company or bank check made payable to NYS Department of Environmental Conservation.

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.** Timely payment of the civil penalty and the implementation of the approved EBP(s) will be considered full compliance with the terms and conditions of this Order, and is accepted as full settlement of the violations described above.

IV. **Binding Effect.** The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or controlled by it.

V. **Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

For the Department:

Chris Van Maaren
Division of Fish, Wildlife and Marine Resources
NYS Department of Environmental Conservation
Region 4
65561 State Hwy. 10, Suite 1,
Stamford, NY 12167-9503

For the Respondent:

C.O.D. Realty Corp.
Attn: Thomas M. Armao
70 Oneida Street
Oneonta, New York 13820

VI. **Summary Abatement.** The terms of 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.

VII. **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, servants, agents, successors or assigns, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

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, such change to be made only upon written agreement of the parties.

IX. **Effective Date.** This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

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 Department or 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 agents, its servants, its employees, its successors and its 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.

XI. **Access.** To ensure compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

XII. **Termination.** The Order shall terminate upon Respondent's complete compliance, as determined by the Department, with the terms, provisions and conditions of this Order.

DATED: November 26, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director

CONSENT BY RESPONDENT

Respondent, C.O.D. Realty Corp., 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: [Signature]
TITLE: PPS
DATE: 11/20/18

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

On the 20th day of November in the year 2018, before me, the undersigned, personally appeared Thomas M. Armao, 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.

[Signature]
Notary Public
Qualified in the County of: Otsego
My Commission Expires: 4-30-19

COLLEEN M. KIRK
NOTARY PUBLIC, State of New York
Originally Qualified Otsego County
Comm. Expires 4-30-19

SCHEDULE OF COMPLIANCE

1. **Effective immediately**, Respondent shall cease any earthmoving, vegetation removal, and/or disturbance activity in the wetland area and corresponding adjacent area, except as specifically provided for in this Schedule of Compliance.
2. **Prior to any additional land disturbance**, Respondent shall install and properly maintain erosion control structures (i.e., silt fencing) on the wetland side of disturbed/filled areas, to prevent turbid water from entering the wetland. These erosion control structures shall remain in place until all disturbed areas are stable and at least 80% revegetated, at which point they shall be removed.
3. **By May 31, 2019**, Respondent shall:
 - a. Remove and properly dispose of all unauthorized fill material onsite to a distance of at least one hundred (100) feet from any waterbody, wetland, or flood plain.
 - b. Restore all areas impacted by unauthorized fill to their original, pre-fill elevation (using the adjacent, unimpacted southwestern area of the Site as reference).
 - c. Restrict all soil removal and grading to the minimum amount necessary to restore impacted areas to their original contours.
 - d. Submit, for Departmental approval, a proposed native emergent seed mix appropriate for Northeast freshwater wetlands to be applied to the impacted area. The seed mix must contain an annual rye grass species (for fast stabilization).
 - i. **Within thirty (30) days of Departmental approval**, Respondent shall apply the approved seed mix, and mulch the area with straw (not mulch hay).
4. Any solid waste removed from the wetland and/or its adjacent area must be disposed of in accordance with all applicable regulations, per 6 NYCRR Part 360.
5. Compliance with this Schedule shall not be a defense to subsequent violations.