

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0815

March 4, 2015

Mr. Marc Newman
Hillside Commons Oneonta, LLC
300 Plaza Drive
Vestal, NY 13850

Re: Order of Consent
R4-2014-0623-125

Dear Mr. Newman:

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

This will also acknowledge receipt of \$11,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: J. McCullough

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17

-by-

ORDER ON CONSENT
File No. R4-2014-0623-125

Hillside Commons Oneonta, LLC
300 Plaza Drive
Vestal, NY 13851-0678

Respondent

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.
2. Respondent, Hillside Commons Oneonta, LLC, is the owner of a property located on Blodgett Drive, Oneonta, New York, Otsego County, adjacent to the SUNY Oneonta Campus ("site"). The project involves the construction of a student housing development consisting of one 40,470 square foot, four story residential building with associated access drives and parking areas. The building is located on a 15.64-acre site with a total drainage are of 23.1 acres. The discharge from the project is piped directly to the Hunt Union Pond, located on the SUNY Oneonta Campus, which is a classified water body (Class "C") that discharges to the Oneonta Creek and ultimately to the Susquehanna River.
3. On April 22, 2014, Department staff conducted an inspection of the site.

Violations of Water Quality Standards

4. Regulations at 6 NYCRR 703.2 set narrative water quality standards for streams for turbidity: *"No increase that will cause a substantial visible contrast to natural conditions."*
5. On April 22, 2014, Department staff observed unstable conditions at the site which resulted in a substantial visible contrast in the water quality discharged from the site to the Hunt Union Pond.
6. The visible water contrast in the Hunt Union Pond caused by the impacted water leaving the site is a violation of regulations 6 NYCRR 703.2.

Stormwater Permit Violations

7. The NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-10-001 ("Permit") states that the owner/operator must ensure that the provisions of the Stormwater Pollution Prevention Plan ("SWPPP") are implemented (Part II.C (1)) and that all erosion and sediment control practices are maintained in effective operating condition at all times (Part IV.A (1)). At the time of the Department's inspection, the site had various areas where stabilization efforts were not used or maintained. The construction entrance had small piles of soil placed there that were found in the same location during an October 13, 2013 Department inspection. The main access road on Blodgett Drive is not being swept on a routine basis and there was no indication that a road sweeper was at the site. The area adjacent to the onsite stormwater collection pond was stabilized last fall with rolled erosion product and seed and mulch. The soil around the pond was not properly prepared as a growth medium as is evident by the sparse grass growth. The entire western portion of the site adjacent to the fence line has not been stabilized and the check dams installed are not effective because they are not constructed correctly or being properly maintained. A drip inlet positioned in this area is not protected to filter sediment laden water, that is impacting the SUNY pond, is originating from this portion of the site.

8. The SPDES Permit (Part IV. C.5.) requires that within one business day of the completion of an inspection, the qualified inspector must notify the owner and appropriate contractor of any corrective actions that need to be taken. Implementation of corrective actions must begin within one business day and shall be completed within a reasonable time frame.

9. The SPDES Permit and technical standards state that fourteen days shall be the maximum exposure period and maintenance must be performed as necessary to ensure continued stabilization. There were numerous locations on site in which unstable soils were found during an October 16, 2013 which were still not stabilized at the time of the April 22, 2014 inspection.

10. The SPDES Permit technical standards (Part III.4 (a)) require that for construction areas, a perimeter sediment control system shall be installed and maintained to contain soil. At the time of the Department's inspection, the site did have a perimeter control system installed along the edge of most of the disturbance however it was not maintained.

11. 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 agree to be bound by the terms, provisions and conditions contained herein.

12. 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.

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

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of TWENTY ONE THOUSAND DOLLARS (\$21,000) of which ELEVEN THOUSAND DOLLARS (\$11,000) 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.

The balance TEN THOUSAND DOLLARS (\$10,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. 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.

IV. 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.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without prior notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Water Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

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

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. 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. 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 Respondents 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. 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.

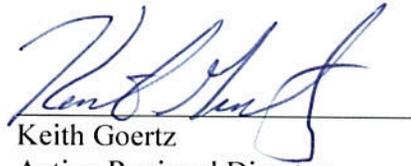
XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

XIV. 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: *March 4,* 2015
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", is written over a horizontal line.

Keith Goertz
Acting Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent 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.

Hillside Commons Oneonta, LLC

Authorized Representative Marc Newman Member

SIGNED: [Signature] Member

TITLE: Member

DATE: 2/26/15

STATE OF New York)

)
)ss.:

COUNTY OF Broome)

On the 26th day of February in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Marc Newman 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.

Patricia Olson

Notary Public
Qualified in the County of: Broome
My Commission Expires: 8-2-16

PATRICIA OLSON
Notary Public, State of New York
No. 01OL6113776
Residing in Chenango County
My Commission Expires 8-2-16

Schedule of Compliance

1. Within 30 of the effective date of this Order, Respondent shall submit to the Department, written verifications from both the City of Oneonta Office of Engineering and SUNY Oneonta Office of Facilities, Planning and Safety, to establish that the Hillside Commons stormwater collection system recently installed on Blodgett Drive, is not creating adverse environmental impacts to either the City of Oneonta stormwater collection system or the SUNY Oneonta stormwater collection system, which includes Hunt Union Pond located on the SUNY Oneonta campus.