

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 8336

May 11, 2018

D. Randel Wasson, P.E., President
Wasson Engineering
5 McDonald Road, Suite 2
Wurtsboro, NY 12790

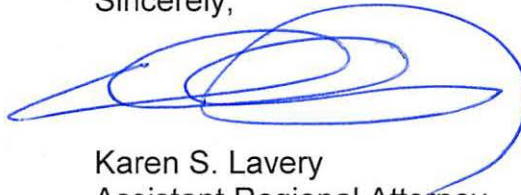
Re: Order on Consent
Howard K. Reiss, Inc.
R4-2018-0226-11

Dear Mr. Reiss:

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

This will also acknowledge receipt of \$1,080 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Card, ECO
D. Thorsland

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT
File No. R4-2018-0226-11

Howard K. Reiss, Inc.
213 Hillside Drive
Oneonta, NY 13820

Respondent

WHEREAS:

Jurisdiction

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.

Respondent

2. Respondent, Howard K. Reiss, Inc. owns and operates a carwash located at 4542 NY-28, Cooperstown, New York ("site").

3. Respondent is a person as defined at ECL §17-0105(1).

Statutes

4. ECL §17-0505 provides that "*the making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by section 17-0701 or title 8 hereof are prohibited.*"

5. ECL §17-0501 provides that *“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.”*

Violations

6. On February 21, 2018, Department staff inspected the site and observed soapy green water discharging from the carwash through a trench in front of the building. The water then went into an underground stormwater runoff system and discharged into the adjacent wetlands.

7. Respondent did not possess a SPDES permit to discharge from the carwash.

8. Respondent violated ECL §17-0505 and ECL §17-0501 by discharging carwash runoff into the wetland and failing to have coverage under a SPDES permit.

Penalties

9. ECL §71-1929 provides for the following civil penalties: *“A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 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 for 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.”*

10. In settlement of Respondent’s civil liability for the aforesaid violations, Respondent has waived its right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on Consent (“Order”) pursuant to the provisions of Article 17 of the ECL, and has agreed to be bound by the provisions, terms and conditions herein.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

I. PENALTY

In respect of the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND FOUR HUNDRED DOLLARS (\$5,400) of which ONE THOUSAND EIGHTY DOLLARS (\$1,080) shall be payable to the New York State Department of Environmental Conservation by money order, or check at the time this Order is signed, notarized and returned to the Department.

The balance FOUR THOUSAND THREE HUNDRED TWENTY DOLLARS (\$4,320) 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. STANDARD PROVISIONS

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

STANDARD PROVISIONS

Payment - Any penalty assessed pursuant to the terms and conditions of this Order shall be paid with the return of the signed and notarized Order on Consent and by certified or cashier's check or money order, payable to the Department of Environmental Conservation, to:

Department of Environmental Conservation
Region 4, Attn: Karen Lavery
1130 North Westcott Drive
Schenectady, NY 12306

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

Department of Environmental Conservation
Region 4, Attn: Derek Thorsland
Regional Water Engineer
1150 North Westcott Drive
Schenectady, NY 12306

Effective Date and Duration - The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

Access - For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure - If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity - 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 resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modifications - No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

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 the violations described in this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in paragraph "A" above, 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 the Commissioner's 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.

Entire Agreement - This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect - The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service - If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents - 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.

DATED: *May 11* 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agree(s) to be bound by the terms, conditions and provisions contained in this Order.

Howard K. Reiss, Inc ^{HR}

By (Signature):

Howard K. Reiss

Title :

Owner

Date:

5/9/18

ACKNOWLEDGMENT

STATE OF NEW YORK)

COUNTY OF Otsego) ss:

On the 9th day of May in the year 2018 before me personally came to me known, who, being by me duly sworn, did depose and say that she; resides in Oneonta, NY that she is the owner of property the corporation described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporation.

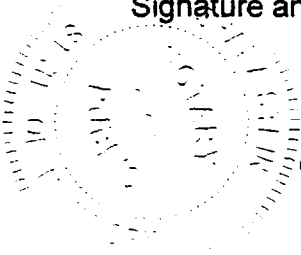
On the 9th day of May in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared Howard K. Reiss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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.

Shana Stein

Notary Public

Signature and Office of individual taking acknowledgment

Shana Stein
Notary Public, State of NY
No. 01ST6151708
Qualified in Otsego Co.
Commission Exp. Aug. 21, 2018



Schedule of Compliance

1. Respondent shall immediately implement measures to prevent any discharge of wastewater from the carwash until satisfactory completion of the schedule items accepted under paragraph No. 2 below.

2. Within 30 days of the effective date of this Order on Consent, the Respondent shall submit a schedule to the Department, which shall become an enforceable part of this Order following Department review and acceptance, that includes milestone dates for the following. All milestones must be completed by no later than August 1, 2018. Respondent may request an extension to this compliance date, in writing to the Regional Water Engineer, for a period of up to 90 days extension based upon good cause.
 - a. Complete installation of a recycle car wash system with no wastewater discharges.
 - b. Submit documentation certified by a professional engineer licensed in and by the State of New York describing the abandonment of the existing wastewater treatment and disposal system.

OR

- a. Submit SPDES permit application and an engineering report and plans prepared by a professional engineer licensed in and by the State of New York for a new wastewater treatment and disposal system.
- b. Start construction of the new wastewater treatment and disposal system.
- c. Complete construction of the new wastewater treatment and disposal system.
- d. Submit documentation certified by a professional engineer licensed in and by the State of New York describing the abandonment of the existing wastewater treatment and disposal system.