

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 9043

September 21, 2018

Mr. Robert Tyson
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, New York 13202-1355

Re: Order on Consent
R4-2017-0821-235

Dear Mr. Tyson:

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

This will also acknowledge receipt of \$4,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: R. Mitchell
D. Thorsland



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

-by-

ORDER ON CONSENT
File No. R4-2017-0821-235

Hudson River Bulk, Inc.
9564 NYS Route 9W
Athens, NY 12015

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.
2. Respondent, Hudson River Bulk, Inc., has a facility located at 9564 NYS Route 9W, Athens, New York ("site").
3. Respondent is a person as defined at ECL §17-0105(1).

Facts

4. On April 13, 2017, Department staff inspected the site and observed that construction activities consisting of filling and grading were occurring. Department staff determined that approximately 28 acres of fill material was placed during construction, perimeter silt fence was not installed, drop inlets were not being protected, stormwater was discharging directly to wetlands without treatment, and fill material had impacted adjacent wetlands. In addition, there was no Stormwater Pollution Prevention Plan ("SWPPP"), documentation from the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP"), or Contractor Certification forms available.
5. On April 18, 2017, a Notice of Violation ("NOV") was issued to Respondent for failure to obtain a SPDES Permit prior to commencement of activities which will ultimately disturb one or more acres. The NOV required that all construction activity at the site be ceased including any clearing, grading and excavating and required Respondent to immediately stabilize all areas of disturbance, until such time as General Permit (GP-0-15-002) coverage is obtained and a SWPPP which accurately reflects all existing and planned construction activity relative to this site has been developed and approved by the Department. The NOV further directed

Respondent to submit to the Department, within 30 business days of receipt of the NOV, a SWPPP which has been prepared in accordance with the New York State Stormwater Management Design Manual and the New York Standards and Specifications for Erosion and Sediment Control. The NOV required that the SWPPP must accurately reflect all existing and planned construction activity relative to the site. The NOV further required that Respondent retain a qualified professional/engineer to assist in development of the plan and that all appropriate approvals must be received by the Department prior to the recommencement of any further construction activity.

6. The Department received no response from Respondent after the issuance of the April 18, 2017 NOV.

Violations

7. Regulations at 6 NYCRR §750-1.4(b) provide that *“For discharges of storm water that are not to groundwater, permits shall be required in accordance with 40 CFR 122.26 except as provided in section 1069 of the Federal Intermodal Transportation Efficiency Act of 1991.”*

8. 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.”*

9. ECL 17-0803 provides that *“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. Respondent’s failure to obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity and the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, prior to commencement of activities that will ultimately disturb one or more acres, are a violation of regulations at 6 NYCRR §750-1.4(b), ECL Articles 17-0501 and 17-0803.

Penalties

11. 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.”*

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

With respect to the aforesaid alleged violation, a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000) is hereby assessed against the Respondent of which FOUR THOUSAND DOLLARS (\$4,000) 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 SIXTEEN THOUSAND DOLLARS (\$16,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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 the 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 them.

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 waive 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 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. 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: *Sept 19* 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, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Hudson River Bulk, Inc.

Authorized Representative John R. Deschaine

SIGNED: [Signature]

TITLE: President

DATE: 9-10-18

STATE OF NEW YORK)

)
)ss.:
COUNTY OF Greene)

On the 16 day of September in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared John R. Deschaine 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:
My Commission Expires:

JOANNA C. SCHMIDT
Notary Public, State of New York
Reg. 01SC6095948
Qualified in Dutchess County
Commission Expires July 21, 2019

Schedule of Compliance

1. Respondent shall immediately stabilize the site or install erosion and sediment controls as deemed necessary by a qualified professional/engineer to prevent potential impacts to water quality. Within 10 days of the effective date of this Order, Respondent shall submit to the Department a written statement of the actions taken as required above.

2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department an engineering report prepared by a Professional Engineer licensed in the State of New York. The report shall describe the current conditions of and activities at the site and any anticipated changes to such. The report shall also provide an evaluation of the need for environmental permitting of current or anticipated activities at the site. Specifically, the report shall evaluate the need for SPDES permit coverage including but not limited to:
 - a. Coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity;
 - b. Coverage under the Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity for stormwater discharges associated with the land transportation business operating at the site; and
 - c. SPDES permit coverage for non-stormwater discharges, including any discharge from the vehicle-washing area;

The report shall include an expeditious schedule for submitting complete applications or Notices of Intent for all permits that are determined to be necessary. The schedule shall become incorporated into this Order upon its acceptance by the Department.