

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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CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 7823

November 22, 2016

Kevin M. Young, Esq.
Young/Summer LLC
Executive Woods
5 Palisades Drive
Albany, NY 12205

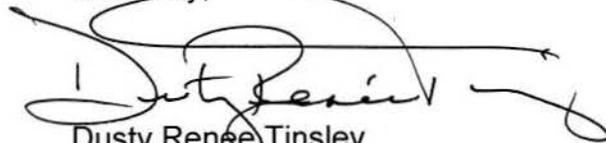
Re: Order on Consent
R4-2016-0722-129
John Schlonsky

Dear Mr. Young:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: D. Thorsland

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17
And 6 NYCRR Part 750

ORDER ON CONSENT

File No. R4-2016-0722-129

-by-

John Schlonsky

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, including Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”). The United States Environmental Protection Agency (“EPA”) has approved the New York State Pollution Discharge Elimination System (“SPDES”) to implement the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit program that includes the regulation of stormwater discharges from the disturbance on one acre of land or more.

Respondent

2. Respondent, John Schlonsky, is the owner of the Schlonsky Property located at 490 Schrader Road, Prattsville, New York, 12468, Greene County (“Site”).

3. 6 NYCRR Subpart 750-1.2(a)(64) defines the term “person” or “persons” as “any individual, public or private corporation, political subdivision, government agency, municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever.” Respondent is a person pursuant to 6 NYCRR Subpart 750-1.2(a)(64).

4. Respondent is a person pursuant to 6 NYCRR Subpart 750-1.2(a)(64).

Stormwater Regulations and General Permit

5. EPA’s regulations for the permitting of stormwater discharges are found at 40 CFR §122.26.

6. Pursuant to Section 402 of the Clean Water Act (“CWA”), stormwater discharges from certain construction activities are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit or by a state permit program.
7. New York’s State Pollutant Discharge Elimination System (“SPDES”) program is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (“ECL”).
8. ECL §17-0501 states “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 states “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. Department regulations at 6 NYCRR Subpart 750-1.4(b) require that stormwater discharges from construction activities require a permit issued in accordance with 40 CFR §122.26.
11. Department regulations at 6 NYCRR Subpart 750-1.21(b)(2) authorize “a general permit for ... Stormwater from construction activities as defined under 40 CFR 122.26(b)(14) (x) (see section 750-1.24 of this Part)”.
12. The Department issued a SPDES General Permit for Stormwater Associated with Construction Activity (GP-0-15-002), effective January 29, 2015, that is consistent with the federal permit requirements under 40 CFR §122.26 (“General Permit”).
13. The General Permit states “This permit authorizes stormwater *discharges* to *surface waters of the State* from the following *construction activities* identified within 40 CFR Parts 122.26(b)(14)(x), 122.26(b)(15)(i) and 122.26(b)(15)(ii), provided all of the eligibility provisions of this permit are met: *Construction activities* involving soil disturbances of one (1) or more acres”. General Permit at Part I(A).

Violation

14. Respondent conducted construction activities at the Site disturbing more than one acre of soil.

15. Respondent was not covered by the General Permit prior to commencement of construction activities at the Site resulting in the disturbance of more than one acre of soil.

16. The Respondent's failure to obtain coverage under the General Permit prior to commencement of construction activities at the Site resulting in the disturbance of more than one acre of soil is a violation of 6 NYCRR Part 750-1.4(b).

Civil Penalty

17. ECL Section 71-1929 states that "Any person who violates any provision of Article 17 shall be liable for a penalty of up to thirty seven thousand five hundred dollars (\$37,500) per day for each violation."

Waiver of Hearing

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

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

I. In full satisfaction of the aforesaid alleged violations, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) which shall be payable to the New York State Department of Environmental Conservation by money order or certified check at the time this Order is returned to the Department signed and notarized.

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

II. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

III. This Order is binding upon the Respondent and shall inure to its benefit and that of its successors and assigns. Respondent is responsible for ensuring that its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto comply with terms and conditions thereof.

IV. All communications except where otherwise specifically directed should be sent as follows:

To the Department at:

Jeffrey McCullough
New York State
Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

Please include the name and address of the facility as well as the permit number for the facility.

And to the Respondent at:

John Schlonsky
3 Dandelion Court
Mt. Sinai, New York 11766

V. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VI. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question without prior notice in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order, and the ECL and regulations promulgated thereunder.

VII. 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 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. 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

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

E. 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.

IX. The effective date of this Order shall be the date the Order is signed by the Department.

X. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

XI. 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: November 22, 2016

Rotterdam, New York

Basil Seggos
Commissioner
New York State
Department of Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent John Schlonsky hereby consents to the issuing and entering of this Order, waives his rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

John Schlonsky
John Schlonsky

DATE: 9/2/16

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

On the 2 day of September in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared John Schlonsky, 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 the which the individual acted, executed the instrument.

Lisa A Bauer

Notary Public

Qualified in the County of:

My commission expires: December 19, 2019

LISA A. BAUER
Notary Public - State of New York
No. 01BA6253193
Qualified in Suffolk County
My Commission Expires December 19, 2019