

**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

**CONFIRMATION BY EMAIL ORDER RECEIVED**

July 9, 2018

Thomas S. West, Esq.  
The West Firm, PLLC  
677 Broadway, 8<sup>th</sup> Floor  
Albany, New York  
[twest@westfirmllaw.com](mailto:twest@westfirmllaw.com)

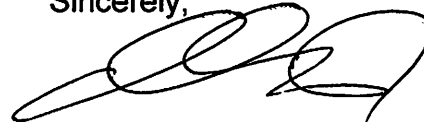
Re: Order on Consent  
R4-2018-0306-35  
Kubricky Construction Corp.

Dear Mr. West:

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

This will also acknowledge receipt of \$4,050 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Regional Attorney  
Region 4

Enclosure

ec: D. Thorsland

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT  
File No. R4-2018-0306-35

Kubricky Construction Corp.  
269 Ballard Road  
Wilton, NY 12831

Respondent

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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, Kubricky Construction Corp., owns and operates a construction business located at 269 Ballard Road, Wilton, New York.

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

Violations

4. 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.*"

5. Part II.C.3 of the SPDES General Permit for Stormwater Discharges for Construction Activity, and regulations at 6 NYCRR Part 750-1.4(b) by disturbing greater than five acres of the site without a permit ("General Permit").

6. 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.”*

7. On February 15, 2018, Department staff inspected the site and observed that more than one acre of land had been disturbed at the location on Partition Street Extension, North Greenbush, New York (“site”) without coverage under the General Permit.

8. Respondent’s disturbance of one acre of land at the site without coverage under the General Permit is a continuous violation of regulations 6 NYCRR §750-1.4(b) and ECL 17-0803.

9. Respondent alleges that its consultant prepared a Stormwater Pollution Prevention Plan (SWPPP) in accordance with Part III of the SPDES General Permit for Stormwater Discharges (GP-0-15-002) (“General Permit”) as verified by the attached SWPPP Preparer Certification Form. Respondent further alleges that it implemented the SWPPP prior to and during the construction activity described in the Order in accordance with Part III of the General Permit but failed to submit a Notice of Intent Submittal as required by Part II of the General Permit for permit coverage.

#### Waiver of Hearing

10. Respondent has affirmatively waived its right to a hearing in the manner provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the terms, provisions, and conditions contained herein.

**NOW, being duly advised and having considered this matter, IT IS HEREBY ORDERED THAT:**

#### 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 FOUR THOUSAND FIFTY DOLLARS (\$4,050) is hereby assessed against the Respondent 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 signed, notarized and returned to the Department.

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: July 9 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.

Kubricky Construction Corp.

Authorized Representative Mark Alexander

SIGNED: [Signature]

TITLE: Vice President

DATE: 7/5/18

STATE OF New York )

COUNTY OF Saratoga ) ss.:  
)

On the 5<sup>th</sup> day of July in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared MARK ALEXANDER 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:

KAREN E. S. DANDREA  
Notary Public, State of New York  
Saratoga County, No. 02DA6090718  
Commission expires 4/21/20 19

## Schedule of Compliance

1. Respondent is authorized by this Order to construct an athletic field on the site provided that it has coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity for such activity including but not limited to an approved SWPPP. No additional materials are to imported to the site for this or any other purpose except topsoil necessary as a medium for growing grass on the athletic field.
2. Within 20 days of completing the construction of the athletic field on the site, Respondent shall submit to the Department a written statement documenting that it complied with its SWPPP.