

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

7013 1090 0002 3365 4691

July 27, 2015

Anthony Lenza, Jr.
Amabile & Erman, P.C.
1000 South Avenue
Staten Island, NY 10314

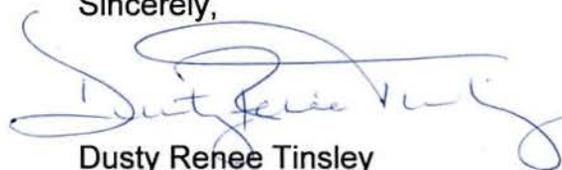
Re: Order of Consent
Leonard Tallo
R4-2015-0521-60

Dear Mr. Tallo:

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

This will also acknowledge receipt of \$8,437 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: A. Dzierwa
J. McCullough
L. Geary, NYCDEP
J. Damrath, NYCDEP
W. Mirrer, NYCDEP



NEW YORK
STATE OF
OPPORTUNITY
Department of
Environmental
Conservation

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. R4-2015-0521-60

Leonard Tallo
PO Box 60072
Staten Island, NY 10306,

Respondent.

Jurisdiction

1. The New York State Department of Environmental Conservation (“DEC” or “Department”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (“ECL”). In particular, DEC is responsible for the protection of the water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated there under. The United States Environmental Protection Agency (“EPA”) has approved the State of the New York’s 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, Leonard Tallo, is the owner of an approximately 54 acre parcel of property located on North Settlement Road in the Town of Ashland, New York (Greene County) (Tax Map #77.00-2-28)(“Site”).

Applicable Stormwater Regulations

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

4. 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.

5. 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”).

6. Section 17-0505 of the ECL states 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.
7. Department regulations at 6 NYCRR 750-1.4(b) require that stormwater discharges from construction activities require a permit issued in accordance with 40 CFR 122.26.
8. Department regulations at 6 NYCRR 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)”.
9. Regulations at 6 NYCRR 750-1.21(d)(4) provide that “Unless otherwise set forth in this Part, department administration of the general permit for storm water discharges shall be in accordance with the federal regulations set forth in 40 CFR 122.26.”
10. The Department has 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”).
11. Department regulations at 6 NYCRR 750-1.21(c) provide that “Any general permit issued under this subdivision shall set forth the applicability of the permit and the conditions that apply to any discharge authorized by such general permit.”
12. Coverage under the General Permit cannot be obtained until the following criteria are satisfied:
 - a. the final Stormwater Pollution Prevention Plan (SWPPP) has been prepared, and
 - b. an Notice of Intent (“NOI”) has been submitted to the Department in accordance with the requirements of this permit.” (Part II, B. 2.a-d.)
13. The General Permit provides that: “An owner or operator shall not commence construction activity until their authorization to discharge under this permit goes into effect.” (Part II. B.1)

Commencement of Construction Activity without a General Permit

14. Respondent is the “owner” and “operator” of the site, as those terms are defined in the General Permit.
15. On April 22, 2011, New York City Department of Environmental Protection (“NYCDEP”) observed construction activity occurring at the site. The activity included the clearing and grubbing of the site, the construction of a pond and dam, and the construction of a driveway/access to the site. NYCDEP staff also observed that no

erosion and sediment controls were in place to prevent the mobilization and transport of materials from the site.

16. On May 6, 2011, Department staff conducted a follow-up inspection of the site and determined that in addition to the construction activity noted in the preceding paragraph, a septic system had been installed on the site and an area had been cleared and a concrete building pad poured for the future construction of a single family home. Approximately five acres of the site had been disturbed.

17. Department staff conducted a review of its records and determined that Respondent had failed to submit a Notice of Intent for Coverage under the General Permit.

18. On June 14, 2011, Department staff issued Respondent a Notice of Violation for commencement of construction that has disturbed one or more acres without the requisite permit. (See Attachment 1.)

19. To date, Respondent has failed to submit a Notice of Intent for Coverage for this site.

20. Respondent's commencement of construction activities at the site as described in the preceding paragraphs without submitting a NOI for Coverage under NYSDEC General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) is a violation of 6 NYCRR Part 750-1.4(b) and ECL Section 17-0505.

Civil Penalties

21. ECL Section 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 to 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."

Waiver of Hearing

22. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

Remedies

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

I. Penalty

In respect to the violations cited in this Order on Consent a civil penalty in the amount of EIGHT THOUSAND FOUR HUNDRED THIRTY SEVEN (\$8,437) is assessed against Respondent. Payment of the civil penalty by bank check made payable to the "Department of Environmental Conservation" is due with the return of the signed and notarized Order on Consent to the Department.

II. Schedule of Compliance

The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

III. Indemnification

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 this Order by Respondent and its successors (including successors in title) and assigns.

IV. Settlement of Violations Contained in Order

Upon completion of all obligations created in this Order including the Schedule of Compliance, this Order settles civil and administrative penalties concerning the violations identified herein against Respondent.

V. Department/Commissioner Rights

Except as provided in Paragraph IV of this Order, 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 his/her 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.

VI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

VII. Access

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

VIII. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IX. Communications

All correspondence to the Department shall be sent to: Region IV, DEC, 1130 North Westcott Road, Schenectady, New York 12306, Attention: Regional Water Engineer.

All correspondence to the Respondent shall be sent to: Leonard Tallo, PO Box 60072, Staten Island, NY 10306.

All correspondence to the New York City Department of Environmental Protection shall be sent to: Joseph Damrath, New York City Department of Environmental Protection, 71 Smith Avenue, Kingston, NY 12401.

X. Reservation of Rights

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.

XI. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any

modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

XIII. Modification

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.

DATED: July 23, 2015
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of Environmental
Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives his rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

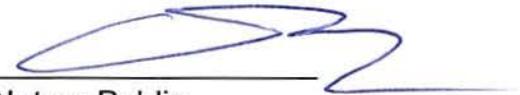
Leonard Tallo (signature): 

Date: 7/16/15

STATE OF NEW YORK)

COUNTY OF Richmond) ss.:

On the 16th day of July in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Leonard Tallo, 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.



Notary Public
Qualified in the County of:
My commission expires:

ANTHONY A LENZA JR
Notary Public, State of New York
No. 02LE6020485
Cert. Filed In Richmond County
Commission Expires: 3/1/19

Schedule of Compliance

1. By September 1, 2015, Respondent shall have a Qualified Professional, as defined by the General Permit, prepare and submit to the Department a Notice of Intent for Coverage under a General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002), including a Stormwater Pollution Prevention Plan ("SWPPP") developed in accordance with GP-0-15-002. The SWPPP shall also be prepared in accordance with the requirements of the Watershed Regulations and submitted to NYCDEP for review and approval. The SWPPP will address all areas of disturbance, inclusive of previously disturbed areas, as well as areas anticipated to be disturbed for the construction of the single family residence. The SWPPP shall be fully implemented within sixty (60) days of obtaining the approval of the NYCDEP.