

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 5362

March 7, 2017

Mr. Harrison Horning, Director
Martin's Foods of South Burlington, LLC
PO Box 1000 M/S 6200
Portland, ME 04104

Re: Order on Consent
R4-2016-1208-172

Dear Mr. Horning:

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

This will also acknowledge receipt of \$3000 the civil penalty pursuant to Paragraph I.

Sincerely,

Dusty Renee Tinsley / JV

Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Malcolm

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT

File No. R4-2016-1208-172

-by-

Martin's Foods of South Burlington, LLC.,

Respondent.

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.
2. Respondent, Martin's Foods of South Burlington, LLC., is the owner and/or operator of a Hannaford Supermarket located at 1140 Western Turnpike, Esperance, New York 12066 (Schenectady County)("Facility"). There is a waste water treatment plant ("WWTP") at the Facility.
3. Respondent was issued SPDES permit #NY0269085 ("SPDES Permit") for the Facility which allows for two treatment process discharges through the WWTP to Outfall 001 which discharges to the Schoharie Creek.

Violations Effluent Limitation Exceedances

4. ECL §17-0511 prohibits the use of point sources unless in compliance with all standards, criteria and limitations.
5. 6 NYCRR Part 750-2.1(e) states that the "permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application."

6. The SPDES Permit sets effluent discharge limits, including the following:

- | | | |
|----|----------------------------|----------------|
| a. | Coliform, fecal 30 day Geo | 200 No./100 ml |
| b. | Coliform, fecal 7 day Geo | 400 No./100 ml |
| c. | BOD, 5-day, 20 deg. C. | 30 mg/L |
| d. | Solids, total suspended | 30 mg/L |
| e. | Chlorine, total residual | 2.0 mg/L |
| f. | Flow rate, daily average | 3050 GPD |

7. The SPDES Permit requires Respondent to submit on a monthly basis to the Department discharge monitoring reports ("DMRs").

8. Respondent submitted DMRs that identified 47 SPDES Permit effluent violations as detailed in **Attachment A**.

9. Respondent's SPDES Permit effluent exceedances are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and the SPDES Permit.

Civil Penalty

10. 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

11. Respondent has affirmatively waived its 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. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of FIFTEEN THOUSAND DOLLARS (\$15,000) of which THREE THOUSAND DOLLARS (\$3,000) 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. TWELVE THOUSAND DOLLARS (\$12,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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:

Regional Water Engineer
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.

To the Respondent at:

Martin's Foods of South Burlington, LLC.
P.O. Box 1000 M/S 6200
Portland, ME 04104

V. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Order because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provided, however, that the Respondent notifies the Department in writing within 5 days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. Review of Submitted Documents

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 sixty (60) 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.

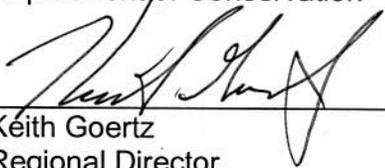
XI. The effective date of this Order shall be the date the Order is signed by the Department.

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

DATED: March 6, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State
Department of Conservation

BY:



Keith Goertz
Regional Director
Region 4

Schedule of Compliance

1. By January 31, 2017, Respondent shall submit approvable engineering plans and an updated construction schedule for the implementation of all improvements to the WWTP as specified in the engineering report prepared by John M. McDonald Engineering, P.C. dated May 2, 2016. The updated construction schedule shall allow 60 days for Department staff review of the engineering plans with construction of all improvements to be completed no later than July 1, 2017.
2. By August 1, 2017, Respondent shall develop, submit to Department staff, and implement an Operation & Maintenance (“O&M”) Manual for the WWTP and Standard Operating Procedures (“SOPs”) for the proper disposal of cleaning chemicals and expired food products. The O&M Manual and the SOPs shall be developed to maintain compliance with 6 NYCRR Part 750-2.8(a).