

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
7013 1090 0002 3365 4837

September 18, 2015

Dr. Kathleen Spring
Mohonasen Central School District
2072 Curry Road
Schenectady, NY 12303

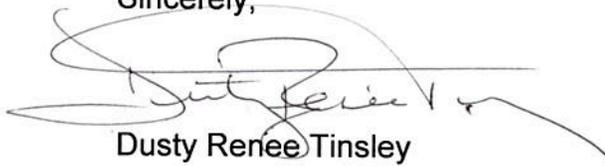
Re: Order of Consent
R4-2015-0812-94

Dear Ms. Spring:

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

This will also acknowledge receipt of \$3,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

cc: J. McCullough



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Environmental
Conservation Law Article 17 and Title 6
of the New York Code of Rules and
Regulations Part 750

by:

Mohonasen Central School District
2072 Curry Road
Schenectady, New York 12303,

Respondent.

ORDER ON CONSENT
File No. R4-2015-0812-94

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, Mohonasen Central School District, is the owner of property located at 2072 Curry Road, Schenectady, New York 12303 (Schenectady 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).

Stormwater Regulations and General Permit

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

5. 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.
6. 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”).
7. 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.
8. 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)”.
9. 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”).
10. 6 NYCRR Subpart 750-1.21(c) states 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.”
11. Respondent prepared a Storm Water Pollution Prevention Plan (“SWPPP”) for the Site in accordance with the General Permit.
12. On January 30, 2015, Respondent submitted a Notice of Intent to be covered under the General Permit for construction activities at the Site. Respondent’s coverage under the General Permit was effective as of February 13, 2015 as permit number NYR10Y983.
13. The General Permit states that “[t]he owner or operator of a construction activity shall not disturb greater than five (5) acres of soil at any one time without prior written authorization from the Department”. (General Permit Part II.C.3.)
14. The General Permit defines “owner or operator” as a “person, persons or legal entity which owns or leases the property on which the construction activity is occurring; and/or an entity that has operational control over the construction plans and specifications, including the ability to make modifications to the plans and specifications.” (General Permit at Appendix A.)
15. Respondent is an owner or operator of the Site.

Notice of Violation

16. On June 30, 2015, Department staff conducted an inspection of the Site. Violations of ECL Article 17 and 6 NYCRR Part 750 were observed during the inspection.

17. Department staff sent the Respondent a Notice of Violation dated July 1, 2015 setting forth the ECL Article 17 and 6 NYCRR Part 750 violations observed during the June 30, 2015 inspection.

18. As of August 14, 2015, Respondent has returned to compliance with all violations cited in the July 1, 2015 Notice of Violation except for the violation of ECL §17-0803, the General Permit, and the Waiver resulting from the Respondent's disturbance of more than five acres prior to July 1, 2015 as detailed in Paragraphs 19 to 23 below.

Violation

19. ECL §17-0803 states that "it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source . . . in a manner other than as prescribed by such permit."

20. Respondent submitted a 5 Acre Disturbance Variance Request to the General Permit dated June 8, 2015 requesting authorization to disturb fifteen acres of soil at the Site at one time.

21. The Department issued Respondent a letter dated June 23, 2015 stating that Respondent "shall not disturb fifteen (15) or more acres of land at any one time. This 5 acre permit waiver is valid from July 1, 2015 through October 31, 2015." ("Waiver")

22. During the June 30, 2015 inspection Department staff observed that Respondent had disturbed soil at the Site in excess of five acres prior to the July 1, 2015 effective date allowed for in the Waiver.

23. Respondent's disturbance of more than five acres prior to July 1, 2015, the first date allowed for in the Waiver, is a violation of ECL §17-0803, the General Permit, and the Waiver.

Civil Penalties

24. 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

25. 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 violation cited in this Order on Consent a civil penalty in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) 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. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order.
- II. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.
- III. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.
- IV. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.
- V. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.
- VI. **Scope.** 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.

VII. **Third Parties.** This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

VIII. **Communications.** Communications shall 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

For Respondent:

Dr. Kathleen Spring
Mohonasen Central School District
2072 Curry Road
Schenectady, New York 12303

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: September 18, 2015
Rotterdam, New York

Marc Gerstman
Acting Commissioner
New York State Department of Environmental
Conservation

BY:



Keith Goertz
Regional Director
Region 4

