

**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  
7015 0640 0000 6900 2888

April 19, 2016

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

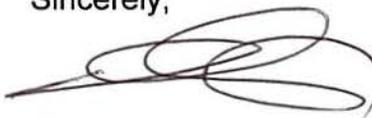
Re: Order on Consent  
R4-2015-1209-140  
Mountainside Farms, Division of  
Worcester Creameries Corp.

Dear Mr. Young:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: G. Wilbur, ECO  
K. O'Connor



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT  
File No. R4-2015-1209-140

Mountainside Farms, Division of Worcester Creameries Corp.  
Route 30  
Roxbury, NY 12474

Respondent

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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.
2. Respondent, Mountainside Farms, Division of Worcester Creameries Corp., Owns and operates a milk processing facility plant located on Route 30 in the Town of Roxbury, New York (Delaware County) ("facility").
3. Respondent has a SPDES permit (SPDES Permit # 0084590) for the facility which authorizes the discharge of effluent from Respondent's Waste Water Treatment Plant ("WWTP") to groundwater through a series of ponds.
4. Respondent is a person as defined at ECL §17-0105(1).
5. On November 6, 2015, Department staff observed discolored water between Dump Road and Montgomery Hollow Road in Hubbel Corners in the Town of Roxbury along the East Branch of the Delaware River. Department staff also observed a milk spill on the old railroad bed at the creamery facility which included milk on the ground and in the water. Department staff also observed a fire hose hooked up to a fire hydrant at the site.

6. ECL Article § 17-0501 provides that *“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.”*

7. Respondent’s discharge of organic matter into the stream is a violation of ECL Article § 17-0501.

8. Regulations at 6 NYCRR 750 1.4 (b) *provides 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”*

9. Respondent violated regulations at 6 NYCRR 750.1.4 (b) by failing to have coverage under the SPDES Multi-Sector General Permit for Stormwater Associated with Industrial Activities Permit (GP-0-012-1-001) under Sector U Food and Kindred Products.

10. 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:

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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.

The balance TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) shall be suspended so long as Respondent shall comply with the Schedule of Compliance. Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

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:  
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 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. 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 Respondents 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: April 18 2016  
Rotterdam, New York

Basil Seggos  
Acting 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.

Mountainside Farms, Division of Worcester Creameries Corp.

Authorized Representative Denyson Wray

SIGNED: Denyson Wray

TITLE: General Manager

DATE: 4/12/16

STATE OF NEW YORK

)ss.:

COUNTY OF Delaware

On the 12 day of April in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Denyson Wray 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.

Diane L. Pickett

Notary Public

Qualified in the County of: Delaware

My Commission Expires: 6/19/2019

**DIANE L. PICKETT**  
Notary Public, State of New York  
No. 01PI5045605  
Qualified in Delaware County  
Commission Expires June 19, 20 19

## Schedule of Compliance

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a spill report describing the incident and its cause; the period of the incident including exact dates and times; and future steps taken by Mountainside to eliminate and prevent a reoccurrence of this incident.
2. Within 60 days of the effective date of this Order, Respondent shall apply for coverage under the SPDES Multi-sector permit, Sector U Food and Kindred Products, or submit a certification in accordance with Part I Section G of the MSGP for a Conditional Exclusion for No Exposure.