

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
7017 1070 0001 0125 8459

June 15, 2018

Dennis J. Phillips
McPhillips, Fitzgerald & Cullum L.L.P.
288 Glen Street
PO Box 299
Glens Falls, NY 12801

Re: Order on Consent
R4-2017-0522-212
Thompson Island LLC
And
Hoosick Forest Products

Dear Mr. Phillips:

Enclosed please find copies of the fully executed Orders on Consent referenced above.

This will also acknowledge receipt of \$28,400 as a total of the civil penalty pursuant to Paragraph I. The penalty of \$14,200 was received for each respondent listed above.

Sincerely,

Karen S. Lavery/ jv

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: D. Thorsland

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT
File No. R4-2017-0522-212

Thompson Island LLC
3600 Rt 7
Hoosick Falls, NY 12090

AND

Hoosick Forest Products
3600 Rt 7
Hoosick Falls, NY 12090

Respondents

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, Thompson Island LLC, is located at 3600 Rt 7, Hoosick, New York.
3. Respondent Hoosick Forest Products, is located at 3600 Rt 7, Hoosick, New York.
4. Respondents are persons as defined at ECL §17-0105(1).
5. Both Respondents were involved in construction activity on property located at 10 Plante Lane, Brunswick, New York ("site").
6. On January 18, 2017, Department staff inspected the site. At that time, construction activities were observed which included tree removal, soil grading, and excavation, which resulted in a land disturbance of greater than one acre and altered the surface hydrology. No erosion or sediment control practices were in place to prevent the mobilization and transportation of soils. The lack of erosion and sediment controls led to an observed violation of the narrative water quality standard for turbidity in a tributary of the Quacken Kill (WIN: H-236-13-2), a class C(T) stream.

7. After a January 20, 2017 meeting with Respondents, Department staff determined that the operation was not being conducted under a forest management plan and was a one-time timber harvest, therefore would be subject to the SPDES General Permit for Stormwater Discharges from Construction Activity.
8. On February 23, 2017, a Notice of Violation (“NOV”) was issued to Respondents for the water quality violation and failure to obtain coverage under the SPDES General permit for Stormwater Discharges from Construction Activity prior to commencement of activities that will ultimately disturb one or more acres. The NOV required that all construction activity at the site be ceased until coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity is obtained.
9. On March 10, 2017, Department staff conducted another inspection of the site conditions and observed another violation of the narrative water quality standard for turbidity in Dink’s Pond (WIN: P417), a class C ponded water.
10. The operators of the site applied for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity. The Acknowledgment letter was issued by the Department on April 26, 2017 and coverage under NYR11C095 was effective on April 30, 2017.
11. On May 3, 2017, Department staff observed another violation of the narrative water quality standard for turbidity in the same tributary of the Quacken Kill as was observed on January 18, 2017. Turbid water was also detected downstream of the property. Mudslides were visible on the skidder trails. At that time, DEC stopped construction activity at the site.

Violations

12. 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.”*
13. ECL 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.”*
14. 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.”*
15. Respondent’s failure to obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity prior to commencement of activities that will ultimately disturb one or more acres is a violation of regulations at 6 NYCRR §750-1.4(b), ECL Articles 17-0501 and 17-0803.

16. Respondent's causing or contributing to a condition in contravention of the water quality standards is a violation of ECL 17-0501.

17. 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."*

Waiver of Hearing

18. Respondent has affirmatively waived its 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 its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violations, **EACH RESPONDENT** is responsible for a civil penalty in the amount FOURTEEN THOUSAND TWO HUNDRED DOLLARS (\$14,200) shall be payable to the New York State Department of Environmental Conservation by money order, or 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 Respondents, their agents, employees, and all persons, firms, corporations acting under or for them and shall resolve all criminal, civil, and administrative liability for the violations contained herein.

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. Respondents 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 Respondents, their 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. Respondents 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 Respondents' compliance with this Order, the ECL and regulations promulgated thereunder.

VII. 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

VIII. This Order is deemed effective on the date signed by the Department.

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 may have against Respondents 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 Respondents and/or any of Respondents' employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondents' 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 Respondents 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 Respondents.

X. 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 Respondents, 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 Respondents 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. 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.

DATED: *June 14* 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.

Hoosick Forest Products

Authorized Representative KARL BERRYMAN

SIGNED: [Signature]

TITLE: SECRETARY

DATE: 6/5/2018

STATE OF NEW YORK)

)
COUNTY OF WARREN) ss.:
)

On the 5 day of JUNE in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared KARL BERRYMAN 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: Dennis J. Phillips]
Notary Public

Qualified in the County of:
My Commission Expires:

DENNIS J. PHILLIPS
Notary Public, State of New York
Warren County, No. 4528182
My Commission Expires Nov. 30, 2018

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.

Thompson Island, LLC

Authorized Representative MARTIN UIGNEWLT

SIGNED: 

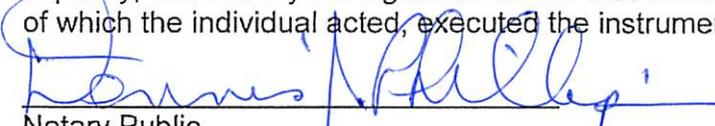
TITLE: SECRETARY

DATE: 5/17/2018

STATE OF New York)

COUNTY OF Warren) ss.:
)

On the 17 day of May in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared MARTIN UIGNEWLT 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.


Notary Public

Qualified in the County of:

My Commission Expires:

DENNIS J. PHILLIPS
Notary Public, State of New York
Warren County, No. 4528182
My Commission Expires Nov. 30, 2018