

**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  
7016 0340 0000 4616 5225

December 22, 2016

Kevin M. Young, Esq.  
Young/Sommer LLC  
Executive Woods  
Five Palisades Dr.  
Albany, NY 12205

Re: Order on Consent  
R4-2016-1207-147  
Twilight Park Cottages, Inc.

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,



Richard Ostrov  
Regional Attorney  
Region 4

Enclosure

ec: D. Thorsland



Department of  
Environmental  
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law Article 17 by:

ORDER ON CONSENT

File No. R4-2016-1207-147

Twilight Park Cottages, Inc.  
Route 23A (Main Street)  
Haines Falls, NY 12406

Respondent.

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WHEREAS:

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 and has been responsible for the protection of water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750, et seq.

2. Respondent, Twilight Park Cottages, Inc. owns and operates a wastewater treatment system ("treatment system") that consists of seepage pits. The ground water discharges are subject to State Pollution Discharge Elimination System permit NY-000 (hereinafter "SPDES permit"). The treatment system serves eighty-two year seasonal residences and ten year round residences and four community buildings. The treatment system handles about 28,000 gpd from October 15 to May 15. The Kaaterskill Creek is listed in the permit as the nearest receiving water body (approximately 500 feet from the residences).

SPDES Permit Violations

3. The SPDES permit authorizes only a groundwater discharge to the treatment system.

4. On May 11, 2016 and July 12, 2016, Department staff observed a surface discharge of sewage water due to overflowing of the seepage pits and/or partially treated sewage water coming to the ground surface after subsurface infiltration.

5. Section 17-0511 of the Environmental Conservation Law (ECL) provides that: "The use of existing or new outlets or point sources, which discharge sewage, industrial wastes or other wastes into waters of this state, is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article."

6. Respondent violated ECL Section 17-0511 by having a surface discharge on May 11, 2016, July 12, 2016 and potentially other days during the summer season from its seepage pits.

#### Civil Penalty

7. ECL Section 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

8. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. Civil Penalty

A civil penalty for TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is assessed against the Respondent for the above violations.

II. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance and all plans and documents approved thereunder by the Department. The Schedule of Compliance is incorporated and made an enforceable part of this Order on Consent.

III. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. Binding Effect

This Order on Consent is binding upon the Respondent and its successor and assigns. Respondent is responsible to ensure that its agents, employees and all persons and firms, and corporations acting subordinate thereto comply with the terms and conditions of this Order.

V. Communications

For Department:

Regional Water Engineer  
New York State Department of Environmental Conservation  
Region 4 1 130 N. Westcott Road  
Schenectady, New York 12306

For Respondent:

Board of Directors  
Twilight Park Cottages, Inc.  
Route 23A (Main Street)  
Haines Falls, New York 12406

With a copy to:

Larry F. Gardner, Esq..  
5364 Main Street  
Windham, New York 12496

P.O. Box 279

VI. Modifications

No change or modification to this Modification shall be made or be effective except upon the mutual consent of both parties hereto and as specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director. Requests for modification will not be unreasonable denied.

VII. Access

For insuring compliance with this Order on Consent, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VIII. Effective Date of Order on Consent

The effective date of this Order on Consent shall be the date it is signed on behalf of the Department.

IX. Indemnification

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, their directors, officers, employees, servants, agents, successors or assigns.

X. Scope of Order on Consent

Except as specifically provided in this Order on Consent, nothing contained in this Order on Consent 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 there under or permits issued there under based upon other than existing contamination.

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 officers, directors, agents, servants, employees, successors and assigns; and

C. 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 on Consent and whether or not this Order on Consent has been entered into voluntarily by Respondent.

#### XI. Review of Submitted Documents

(A) Whenever the Department's approval of a submittal under the terms of this Order on Consent 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 on Consent 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 on Consent.

(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 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 on Consent. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. Both parties reserves their right to take whatever action it deems necessary after the second disapproval of a submittal.

#### XII. Settlement Terms

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

DATED: Rotterdam, New York  
December 20, 2016

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Keith Goertz  
Regional Director  
Region 4



## Schedule of Compliance

I. By May 30, 2017, Respondent shall submit for review and acceptance a preliminary engineer's report prepared by a Professional Engineer licensed to practice in New York State. At a minimum, the report shall include the following:

A. Results of a site and soil evaluation for subsurface discharge consistent with the requirements of the New York State Design Standards for Intermediate Sized Wastewater Treatment Systems at a minimum of three locations (old golf course, property near park entrance, & property south of storage yard) to determine if conditions are appropriate for on-site subsurface treatment and discharge.

B. Results of an infiltration and inflow (I/I) investigation of the existing sanitary sewer collection system and a rehabilitation plan and schedule;

C. Results of an investigation related to the installation of new sanitary sewers to address I/I and to serve an new on-site treatment system;

D. Basis of design for the new sanitary sewers and on-site subsurface treatment and disposal system;

E. A schedule to submit for review and approval a final engineer's report, plans, permit applications, and construction schedule. If the site and/or soil evaluation indicates that conditions are not appropriate for on-site subsurface treatment and discharge, the schedule shall also include the submission of a revised preliminary engineer's report which identifies the selected alternative and the basis of design for the selected alternative.

II. By May 1, 2017, Respondent shall implement interim measures to reduce the loading on the existing seepage pits and monitor for unpermitted discharges. The measures shall include but not be limited to the following:

A. Use of on-site seasonal/winter septic systems as approved by NYSDOH.

B. Reduction of inflow and infiltration as noted in the rehabilitation plan and schedule above.

C. Perform weekly inspections of all seepage pit and surrounding areas and document the inspection results with written reports and photos.

D. Implement successive remedial measures to eliminate any discharges of sewage to surface waters of the state or any adjoining private property. If a complaint is received and verified by the Department regarding the discharge of sewage to a surface water of the state or any adjoining private property, the Respondent must immediately begin implementation of remedial measures upon notification from the Department. The measures may include but not be limited to the following:

i. Switch buildings contributing to the failing seepage pit to on-site seasonal/winter septic systems as approved by NYSDOH if not already done so under the interim measures.

ii. Install temporary tankage to intercept and store sewage flow contributing to the failing seepage pit.

iii. Within 24-hours of discovery, notify Department staff of such discharge and provide documentation of the remedial measure(s) implemented.

iv. Provide daily updates to the Department until the discharge has ceased.