

New York State Department of Environmental Conservation

Office of Environmental Quality, Region 5

232 Golf Course Road – P. O. Box 220, Warrensburg, New York 12885-0220

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Alexander B. Grannis
Commissioner

September 11, 2008

**CERTIFIED MAIL #7007 0220 0004 3450 0958
RETURN RECEIPT REQUESTED**

Mr. Greg Bombard
Vice President
Bombard Excavating Corp.
7124 Clark Road
Middle Grove, NY 12850

**Re: NOTICE OF VIOLATION
SPDES Permit Identification No. NYR10L775 (through Permit No. GP-0-08-001)
Case No. R5-20080909-831
Royal Anchorage Estates Wastewater System
Putnam (T), Washington (Co.)**

Dear Mr. Bombard:

On August 19, 2008, Ms. Beth Magee of the New York State Department of Environmental Conservation ("Department") conducted an inspection of the above referenced construction site jointly with Mr. Shaun LaLonde of the Adirondack Park Agency. You were among those present during the inspection. A copy of her inspection report was previously sent to you. The purpose of the inspection was to verify compliance with the *State Pollutant Discharge Elimination System (SPDES) General Permit (No. GP-0-08-001) for Stormwater Discharges from Construction Activity* ("general permit"). The inspection was prompted by a complaint from a member of the public alleging that stormwater discharges from the site had caused turbidity plumes in Lake George on August 6, 2008.

As a follow-up to the August 19, 2008 inspection, Mr. Randy Galusha and I of the Department visited the site with Ms. Magee on August 29, 2008. As a result of the inspection and follow-up site visit, please be advised of the following:

- Having signed a contractor certification in accordance with Part III.A.5 of the general permit, your company accepted responsibility for implementing the Stormwater Pollution Prevention Plan (SWPPP) and any corrective actions identified by the qualified inspector.
- The SWPPP includes details on how to install the erosion and sediment controls at the site. Ms. Magee observed on August 19, 2008 that some rock check dams and silt fence at the site were not installed correctly. **Your failure to properly install the erosion and sediment controls at the site is a violation of the SWPPP.**

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- The SWPPP contains maintenance requirements. Ms. Magee observed on August 19, 2008 that some rock check dams and silt fence, although installed properly, were not being adequately maintained. **Your failure to properly maintain the erosion and sediment controls at the site is a violation of the SWPPP.**
- The SWPPP contains criteria for stabilizing inactive areas of the site. On August 19, 2008, Ms. Magee observed inactive areas at the site which had not been stabilized in a timely fashion. **Your failure to stabilize inactive portions of the site in a timely manner is a violation of the SWPPP.**
- Part IV.C.5 of the general permit requires that contractors implement any corrective actions specified in the qualified inspectors' inspection reports within one business day of notification. During the August 19, 2008 inspection, Ms. Magee reviewed the weekly inspection reports prepared by the qualified inspector. In so doing, she observed that several consecutive inspection reports highlighted the same corrective actions to be taken. This showed that some of the corrective actions were not being initiated within one business day. **Your failure to implement all of the corrective actions in a timely fashion is a violation of the SWPPP.**
- Part VII.A of the general permit states that all contractors associated with the project must comply with the terms of the SWPPP. It also states that any failure to comply is grounds for an enforcement action against the contractor.
- Lake George (Waters Index Number C-101-P367) has been assigned the Class of AA-Special with the standards of AA-Special by Section 830.4 of Title 6 of the Official Compilation of the Codes, Rules, and Regulations of the State of New York (6 NYCRR), Table I, Item No. 430.
- 6 NYCRR 703.2 describes the narrative water quality standard for turbidity in Class AA-Special waters as "(n)o increase that will cause a substantial visible contrast to natural conditions."
- Section 17-0501 of the Environmental Conservation Law (ECL) states that "(i)t shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that will cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to Section 17-0301." **Based on information provided to the Department by the complainant, your failure to implement the SWPPP contributed to a contravention of the narrative water quality standard for turbidity in Lake George on August 6, 2008 in violation of ECL 17-0501.**

The civil liability for violations of Titles 5 and 8 of Article 17 of the ECL are described in ECL 71-1929. Any person who violates any provision of Titles 5 and 8 of Article 17 shall be liable to a penalty of not to exceed thirty-seven thousand five hundred (\$37,500) per day for each violation.

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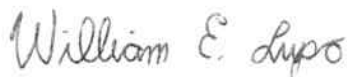
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Enclosed you will find a Consent Order which seeks to resolve the violations through the imposition of a penalty. If you choose to accept the Department's settlement offer, please sign and notarize the Consent Order, produce a certified check or money order made payable to the Commissioner of the Department of Environmental Conservation, and return them to NYSDEC - Region 5, Attn: Legal Affairs, 1115 State Route 86, P.O. Box 296, Ray Brook, NY 12977-0296 office **by September 30, 2008**. The Department will complete execution of the Consent Order and provide you with a copy. Unannounced follow-up inspections may be conducted by Department staff to verify compliance.

Should you decide not to accept this settlement offer, this matter will be referred to, and pursued by, the Regional Attorney.

If you have any questions on this matter, please feel free to contact me at (518) 623-1228.

Sincerely,



William E. Lupo, P.E.
Environmental Engineer 2

WEL:lc
Enclosure

cc w/o enc.: John Breitenbach, Jr., Esq. - Town of Putnam
Supervisor John LaPointe - Town of Putnam
Timothy Moot, CPG - Clark Patterson Lee

ec w/enc.: Chris Lacombe, Esq. - NYSDEC, Ray Brook

ec w/o enc.: Shaun LaLonde - Adirondack Park Agency
Brian Huyck, P.E. - NYSDEC, Ray Brook
Bill Wasilauski, P.E. - NYSDEC, Warrensburg
Michael White - Lake George Park Commission

bec w/o enc...: Chris Navitsky - Lake George Waterkeeper