

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Article 17 of the New York State
Environmental Conservation Law and of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of New
York Part 750, by:

Allen Farms, LLC; Allen Farms Realty, LLC; and
Duane and Gary Allen
(T) Scipio
Cayuga County, New York,

CONSENT
ORDER

CASE NO.
R7-20140319-21

Respondents.
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1. The New York State Department of Environmental Conservation ("the Department") is responsible for the administration and enforcement of Article 17 of the New York State Environmental Conservation Law ("ECL") and of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("6 NYCRR") Part 750, promulgated pursuant thereto.
2. Allen Farms, LLC ("Respondent Allen Farms") and Allen Farms Realty, LLC ("Respondent Allen Farms Realty") are domestic limited liability companies with offices located at 2927 Hunter Road in the Town of Scipio, Cayuga County, New York.
3. Duane Allen ("Respondent Duane Allen") and Gary Allen ("Respondent Gary Allen") reside on Hunter Road in the Town of Scipio, Cayuga County, New York. Together, the four Respondents own and operate a dairy farm known as Allen Farms located at 140 Hunter Road, also known as 2927 Hunter Road, and at 4069 Rice Road in the Town of Scipio, Cayuga County, New York ("the Facility").

4. ECL 17-0803 and 6 NYCRR Section 750-1.4(a) provide that it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a State Pollutant Discharge Elimination System ("SPDES") permit or in a manner other than as prescribed by such permit.

5. 6 NYCRR Section 750-1.21(b)(4) provides for a general permit for Concentrated Animal Feeding Operation ("CAFO") facilities. In accordance with such authorization, the Department issued SPDES General Permit GP-99-01 for CAFOs, with effective date July 1, 1999, and expiration date June 30, 2004. GP-99-01 was succeeded by GP-04-02 on July 1, 2004.

6. On December 4, 1999, Respondents Duane Allen and Gary Allen filed a Notice of Intent to obtain coverage for Allen Farms under SPDES GP-99-01 General Permit for CAFOs.

7. GP-04-02 Section VIII.C.vii provides that there shall be no water quality impairment to public or neighboring private drinking water wells due to waste handling at the permitted facility.

8. On or about February 20, 2014, Respondents applied manure to Field 37 along Rice Road in the Town of Scipio, Cayuga County, New York, which caused the contamination of a neighboring private drinking water well at 4271 Rice Road.

9. GP-04-02 Section VIII.C.viii provides that solids, sludge, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of so as to prevent pollutants from being discharged to waters of the State.

10. On or about February 21, 2014, manure which Respondents had applied to Field 50 along Rice Road caused contaminated runoff to discharge into Tributary 44a of Owasco Lake.

11. On or about March 11, 2014, and March 28, 2014, manure which Respondents had applied to Field 27 along Black Street in the Town of Scipio, Cayuga County, New York, caused contaminated runoff to discharge into Tributary 9a-1 of Yawger Creek.

12. In addition, on or before April 9, 2014, manure which Respondents had applied to Field 1 near Gilling Road in the Town of Scipio, Cayuga County, New York, caused contaminated runoff to discharge into Tributary 16 of Crane Brook.

13. The conduct referred to above was in violation of GP-04-02 Sections VIII.C.vii and VIII.C.viii, ECL 17-0803, and 6 NYCRR 750-1.4(a).

14. ECL 71-1929 provides for a civil penalty of up to **thirty-seven thousand five hundred dollars (\$37,500.00)** per day for each violation of title 5 or 8 of ECL, Article 17 and regulations or permits promulgated thereunder and for injunctive relief preventing the continuation of such violations.

15. Respondents, with respect to the violations described herein, have affirmatively waived the right to a hearing on this matter as provided by law, consent to the issuing and entering of this Order, and agree to be bound by the provisions, terms, and conditions contained herein.

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

I. Penalty. Within thirty days after the effective date of this Order, Respondents shall pay a civil penalty in the amount of **ten thousand dollars (\$10,000.00)**, payment of which shall be made to the New York State Department of Environmental Conservation at its Region 7 Headquarters, 615 Eric Boulevard West, Syracuse, New York 13204-2400, to the attention of the Office of General Counsel.

II. Suspended Penalty. Respondents are further assessed an additional civil penalty in the amount of fourteen thousand dollars (\$14,000.00), payment of which is suspended as a penalty to guarantee compliance and shall become payable in the event that Respondents fail to comply with the terms of this Order.

The penalty to guarantee compliance under this paragraph shall become due and payable within 15 calendar days after Respondents receive written notice from the Department that Respondents were or are in violation of this Order.

III. Schedule of Compliance. Respondents shall comply with the terms, provisions, and conditions of the Schedule of Compliance annexed to and made a part of this Order as Appendix I.

IV. Stipulated Penalty. If Respondents fail to comply with any requirement of this Order, the Department shall be entitled to payment by Respondents of stipulated penalties, to be calculated in accordance with the following schedule for each such requirement:

<u>Period of Non-compliance</u>	<u>Penalty Per Day</u>
1 - 30 Days	\$50
31 - 59 Days	\$100
60 days and thereafter	\$150

Stipulated penalties under this section begin to accrue on the day on which Respondents' failure to comply with any provision of this Order first occurs and shall continue to accrue for each such violation until Respondents perform the required activity.

V. Inspections. Respondents shall at all times allow any duly designated employee, consultant, contractor, or agent of the Department or of any other State agency to immediately enter the Facility or areas in the vicinity of the Facility which may be under the control of Respondents for purposes of inspecting and ensuring Respondents' compliance with this Order, with any permit, registration, license, or certificate heretofore or hereafter issued for the Facility, and with applicable laws and regulations.

VI. Indemnification. Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims resulting from compliance or attempted compliance with the provisions of this Order.

VII. Reservation of Rights. The Department hereby reserves all its legal, administrative, and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any summary abatement powers the Commissioner may have pursuant to ECL 71-0301.

VIII. Modifications. No change in this Order shall be made or become effective except as specifically set forth by a further written order of the Department, being made either upon written application to the Department by the Respondents setting forth the grounds for the relief sought, or upon the Department's own findings after an opportunity for the Respondents to be heard, or pursuant to the summary abatement powers of the Department.

IX. Regulatory Fees. Nothing contained in this Order shall be construed as preventing the Department from collecting regulatory fees, where applicable.

X. Binding Effect. The provisions, terms, and conditions of this Order shall bind Respondents, the agents, servants, employees, successors, and assigns of Respondents, and all persons, firms, and corporations acting under or for Respondents.

XI. Effective date. The effective date of this Order shall be the date it is signed by the Commissioner or the Commissioner's designee.

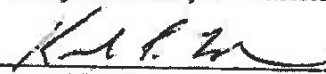
XII. Approval of Plans. "Approvable" within the context of this order shall mean capable of being approved by the Department with only minimal revision. Minimal revision shall mean revised and resubmitted to the Department within fifteen days after notification by the Department of revisions that are necessary.

Date: SYRACUSE, NEW YORK
June 10, 2014

**NEW YORK STATE THE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION**

Joseph Martens, Commissioner

By



Kenneth P. Lynch
Regional Director, Region 7

CONSENT BY RESPONDENT

Respondent **Allen Farms, LLC** hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

Allen Farms, LLC, by:

Signature Duane Allen

Printed Name Duane Allen

Title Manager

Date 6-3-14

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :) ss.:
COUNTY OF Cayuga

On the 3rd day of June in the year 2014, before me personally came Duane Allen, 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)(she) is the Manager of Allen Farms, LLC, and that (he)(she) executed the within instrument in (his)(her) capacity, and that by (his)(her) signature on the instrument, that limited liability company executed the instrument.


NOTARY PUBLIC

JOHN A. KARPINSKI
Notary Public in the State of New York
Qualified in Cayuga County No. 1375
My Commission Expires: 8-31-17

CONSENT BY RESPONDENT

Respondent **Allen Farms Realty, LLC** hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

Allen Farms Realty, LLC., by:

Signature Duane Allen

Printed Name Duane Allen

Title Manager

Date 6-3-14

ACKNOWLEDGMENT

STATE OF NEW YORK)

COUNTY OF Cayuga) ss.:

On the 3rd day of June in the year 2014, before me personally came

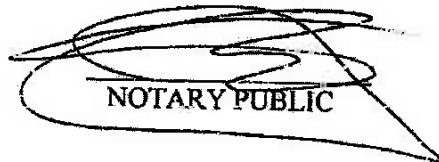
Duane Allen, personally known to me or proved to me on the basis of

satisfactory evidence to be the individual whose name is subscribed to the within instrument, and

acknowledged to me that (he)(she) is the Manager of **Allen Farms Realty,**

LLC, and that (he)(she) executed the within instrument in (his)(her) capacity, and that by

(his)(her) signature on the instrument, that limited liability company executed the instrument.


NOTARY PUBLIC

JOHN A. KARPINSKI
Notary Public in the State of New York
Qualified in Cayuga County No. 1378
My Commission Expires 8-31-17

CONSENT BY RESPONDENT

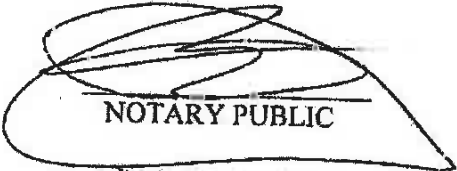
Respondent **Duane Allen** hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

Duane Allen, by:
Signature Duane Allen
Date 6-3-14

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :) ss.:
COUNTY OF Cayuga

On the 3rd day of June in the year 2014, before me personally came **Duane Allen**, 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 within instrument in his capacity.


NOTARY PUBLIC
JOHN A. KARPINSKI
Notary Public in the State of New York
Qualified in Cayuga County No. 1878
My Commission Expires 6-31-15

CONSENT BY RESPONDENT

Respondent Gary Allen hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

Gary Allen, by:

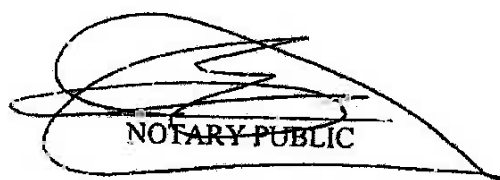
Signature Gary Allen

Date 6-3-14

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :) ss.:
COUNTY OF Cayuga)

On the 3rd day of June in the year 2014, before me personally came Gary Allen, 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 within instrument in his capacity.


NOTARY PUBLIC

JOHN A. KARPINSKI
Notary Public in the State of New York
Qualified in Cayuga County No. 1372
Commission Expires 2-21-17

Appendix I

SCHEDULE OF COMPLIANCE

1. Effective immediately, no manure spreading on snow shall occur on the parcels identified as numbers 1, 27, 37, 47, 48, 69, 70, 151, 152, 153, and 154 in the facility Comprehensive Nutrient Management Plan ("CNMP") until the plan outlined in item 2 below has been approved and implemented.
2. By July 30, 2014, Respondents shall submit for Department approval an approvable plan to reduce contaminated runoff and groundwater contamination from the Facility. The plan shall be completed by a New York State-certified Agricultural Environmental Management (AEM) planner and shall include a proposed schedule for implementing recommended improvements.
 - a. The plan shall evaluate winter spreading on all parcels where winter spreading is planned in the facility CNMP. The evaluation must include a visual site inspection of all such parcels. Concentrated flow paths, nearby watercourses, slopes, tile inlets, and any other factors that may contribute to contaminated runoff leaving the site must be evaluated in the plan.
 - b. CNMP parcel numbers 1 and 27 shall be evaluated for additional measures to prevent contaminated runoff. Additional setbacks from tile inlets and concentrated flows paths must be clearly specified.
 - c. CNMP parcel numbers 151, 152, 153 shall be evaluated to prevent excessive erosion and runoff to tile inlets or surface waters.
 - d. CNMP parcel numbers 37, 46, 47, 69, and 70 shall be evaluated for additional measures to prevent contamination of drinking water wells.
 - e. All areas of concentrated flow shall have setbacks identified in the CNMP that meet the requirements of the USDA NRCS CNMP Process Guideline 20 ft minimum, unless manure is immediately incorporated into the soil.
 - f. The plan shall also include an evaluation of manure storage capacity, the addition of manure storage to achieve storage capacity for six months of manure production, and other changes to reduce runoff.
3. Upon Department approval of the plan, Respondents shall undertake the improvements and all associated measures in accordance with the approved plan and schedule, and shall update the Facility's CNMP accordingly.
4. Within 10 days after completion of plan implementation, Respondents shall submit written certification to the Department that the plan has been implemented as approved.

