

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 17 of the
Environmental Conservation Law and Part 700, et seq., of
Title 6 of the Official Compilation of Codes, Rules and
Regulations of the State of New York and CAFO Permit
No. GP-0-14-001, by:

CONSENT
ORDER

Case No.
CO8-20160210-13

SCOTT MARSHALL, KEN VANFLEET,
Respondent.

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is an Executive Agency of the State of New York with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR" or the "Regulations").
2. The Department's jurisdiction includes, inter alia, the regulation of discharges of pollution to the waters of the State pursuant to the provisions of ECL Article 17 and the regulations promulgated thereunder at 6 NYCRR Parts 700, et seq.
3. This consent Order (the "Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.
4. SCOTT MARSHALL, KEN VANFLEET (the "Respondent") maintains a place of business at 5800 LAKE BLUFF ROAD, NORTH ROSE, NY 14516, and is a "person" as defined in ECL §§ 1-0303(18) and 17-0105(1).
5. The Respondent owns, operates and/or maintains control of the MARSHALL FARMS GROUP LTD. ("Farm") located at 5800 LAKE BLUFF ROAD, NORTH ROSE, NY 14516.
6. The Farm is a medium, Concentrated Animal Feeding Operation (CAFO) as defined by 6 NYCRR 750-1.2(21).
7. Pursuant to its authority under Article 17 of the ECL, the Department issued a General Permit GP-0-14-001, effective July 1, 2014, (the "General Permit") regulating discharges from the Concentrated Animal Feeding Operations ("CAFO"). Among other things, the General Permit requires permittees to

develop and implement Best Management Practices ("BMPs") within the facility's Comprehensive Nutrient Management Plan ("CNMP").

8. The Farm is covered under and subject to a State Pollutant Discharge Elimination System ("SPDES") General Permit GP-0-14-001 for CAFO, Authorization No. 8-54-00-115, SPDES No. NYA000519.

9. General Permit GP-0-14-001 Condition III.C. requires medium CAFOs to fully implement their CNMP by June 30, 2014.

a. Respondent failed to meet the full implementation deadline for CNMP practice implementation by June 30, 2014.

10. General Permit GP-0-14-001 Condition III.E. requires the permittee to comply with all provisions of the CNMP:

a. Respondent failed to comply with the designated implementation schedule, including all structural and non-structural BMP's, as specified in the CNMP.

11. Pursuant to ECL § 71 - 1929, any person who violates any provision 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 thereunder shall be liable to a penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) per day for each violation as well as injunctive relief.

12. Representatives of the Respondent and the Department have conferred and have agreed to execute this Order in settlement of Respondent's civil liability for the violations described herein.

13. Respondent affirmatively waives its right to a hearing as provided by law, consents to the issuing and entry of this Order pursuant to the provisions of Articles 17 and 71 of the ECL and agrees to be bound by the provisions, terms, and conditions contained in this Order and attachments thereto.

NOW, having considered this matter, **IT IS ORDERED THAT:**

I. **Civil Penalty.** With respect to the violations identified in this Order, the DEC hereby assesses against Respondent a civil penalty in the amount of \$9500 to be paid as follows:

A. **Payable Penalty:** ~~\$3500~~ ^{\$4750. RVP} shall be paid when Respondent signs this Order and returns it to the Department. Payment must be made by certified check or money order (payable to the "Department of Environmental Conservation") and submitted to: Office of the General Council, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1500, Attn: Elissa Armater.

B. **Suspended Penalty:** The balance of the penalty, in the sum of ~~\$6000~~ ^{\$4750. RVP}, shall be suspended, and shall not be payable provided that Respondent fully complies with the requirements of this Order, including the Schedule of Compliance attached hereto. If Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from respondent within 30 days of receiving written notice from the Department that penalties are due. The determination of the suspended penalty amount due shall be in the Department's sole discretion.

II. This Order, and all attachments thereto, shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to those who may carry on any or all of the operation now being conducted by Respondent, whether at the present location or at any other in this State.

III. **General Conditions Applicable To Submissions Required Under This Order.** The following conditions apply to the submissions required under the compliance directives of this Order:

A. Should Respondent fail to make any submissions as required by this Order, or should the submission otherwise fail to comply with the requirements of this Order, the Department may declare Respondent to be in violation of this Order; and pursue any other remedy against Respondent provided by law;

B. All engineering submissions must be prepared under the direction of a professional engineer, and he shall certify to the Department and to the applicant that the constructed facilities have been evaluated under his supervision and that the works have been fully completed in accordance with his engineering reports, plans and specifications. All non-engineering submissions must be prepared under the direction of an Agricultural Environmental Management (AEM) planner certified to develop and review Certified Nutrient Management Plans (CNMPs) for CAFOs and signed by both the AEM planner and the owner/operator.

C. Respondent shall diligently reply to all questions, comments and issues raised by the Department in its review of any submission; and


D. The terms and conditions of the Department's approval of any submission, including any schedule established thereby, constitute and become material parts of this Order and are enforceable as such without further modification of this Order. However, in its sole discretion, the Department may modify this order unilaterally for the sole purpose of memorializing the terms and conditions of any approval issued by the Department, including any schedule established thereby, without prior notice to the Respondent. If the order is so modified, the remaining terms of this order shall remain unchanged and in full force and effect. By executing this Order, Respondent consents to a unilateral modification.

IV. **Standard Provisions.** Respondent shall further comply with the standard provisions recited on the attached blue cover, which constitutes material and integral terms and conditions of this consent order by reference.

V. **Effective Date and Period of Order.** The effective date of this Order is the date that the Commissioner or his designee signs it. The Order will remain in effect until Respondent, has certified in writing to the fulfillment of all of the remedial requirements stated in this Order and has paid all penalties assessed hereby.

Dated: 3, 18, 2016
New York

Basil Seggos,
Acting Commissioner
New York State Department of
Environmental Conservation

By: 

Joseph DiMura, P.E., Director
Bureau of Water Compliance
Division of Water

COMPLIANCE SCHEDULE A
MARSHALL FARMS GROUP LTD.
CASE NO. CO8-20160210-13

BEST MANAGEMENT PRACTICE (BMP)	COMPLETION DATE
Final completion of Stormwater Runoff and Sediment Control, and Waste Transfer System	5/31/2018 12/31/2018 KVF
Submit Progress Report letter updating the status of BMP implementation	October 31 st of each year until Certification of Compliance is submitted
Submit Compliance Certification documenting completion of all required BMPs	6/29/2018 1/31/2019 KVF

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to the Office of the General Council, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1500, Attn: Elissa Armater. Unpaid penalties imposed by this order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Default of Payment. The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

Communications. Except as otherwise specified in this order, any reports, submissions, and notices herein required shall be made to Joseph DiMura, P.E., Director, Bureau of Water Compliance, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3506.

Access/Inspection. For the purpose of monitoring or determining compliance with this order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if Respondent cannot comply with any requirements of the provisions hereof because of an act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondent was not foreseen or a proximate cause, provided, however, that the Respondent shall immediately notify the Department in writing, when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof; Respondent will adopt all reasonable measures to prevent or minimize any delay.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives, employees, agents and contractors harmless for all claims, suits, actions, damages and costs of every nature and description arising out of resulting from the fulfillment or attempted fulfillment of this order by the Respondent, its employees, servants, agents, successors (including successors in title) and assigns.

Modifications. No change in this order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this order shall be construed as barring, diminishing, adjudicating or in any way affecting any right of the Department to directly perform, to engage others to perform on its behalf, or to direct others including Respondent to perform, any additional measures that are authorized by law to protect human health, safety or the environment, including the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this order, service of a duly executed copy of this order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondent. If more than one Respondent is a signatory to this order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the order.