

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 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 (NYCRR) Part 703,

ORDER

- by -

DEC Case No.
R6-20170105-02

GREGORY C. HEMMERICH,

Respondent.

This administrative enforcement proceeding addresses allegations of staff of the New York State Department of Environmental Conservation (Department) that Gregory C. Hemmerich (respondent) violated ECL 17-0501 by draining or otherwise discharging sediment laden waters into Abijah Creek from respondent's logging operations on property located adjacent to 25301 County Route 93 in the Town of Worth, Jefferson County, New York (site).

Administrative Law Judge (ALJ) Michael S. Caruso of the Department's Office of Hearings and Mediation Services was assigned to this matter. ALJ Caruso prepared the attached default summary report, which I adopt as my decision, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear at a pre-hearing conference scheduled for August 9, 2017 (see Default Summary Report at 4 [Finding of Fact No. 15]). The record also demonstrates that respondent was served with a copy of the motion for default judgment and supporting papers and did not oppose the motion (see Default Summary Report at 4 and 7; see also Affidavit of Service by Mail of April L. Sears, sworn to November 10, 2017).

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (see Default Summary Report at 7). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. Staff's papers submitted in support of its motion for default judgment provide proof of the facts sufficient to support staff's claim that respondent drained or otherwise discharged sediment laden waters into Abijah Creek, a class C trout stream designated with a trout spawning standard C(TS), from respondent's logging operations (see, e.g., Affidavit of

Mark Malone, sworn to October 11, 2017, ¶¶ 3-6 [describing impacts of logging operation, including turbidity of Abijah Creek], Affidavit of Stephanie Larkin, sworn to October 18, 2017, ¶¶ 4-6 [noting soil exposure at the site, deeply rutted skid trails and muddy water flowing into Abijah Creek]; see also Affidavit of Randall C. Young, Esq., sworn to October 20, 2017 [Young Affidavit], Exhibit A [Complaint], ¶ 12 [the water in Abijah Creek upstream of respondent's logging operation was clear but "[d]ownstream . . . with runoff from [r]espondent's operations, the water in Abijah Creek was turbid and brown"]).

ECL 17-0501 prohibits the discharge of matter into the waters of the State that causes or contributes to a condition in contravention of the water quality standards adopted by the Department pursuant to ECL 17-0301. The Department has adopted a narrative water quality standard for turbidity pursuant to ECL 17-0301. For Class C waters, as well as other designated classes of waters, the standard is "[n]o increase that will cause a substantial visible contrast to natural conditions" (6 NYCRR 703.2). Respondent's logging operations caused turbid conditions in Abijah Creek that resulted in substantial visible contrast to natural conditions. Thus, respondent has violated ECL 17-0501.

Department staff seeks a civil penalty in the amount of eight thousand four hundred thirty dollars (\$8,430) (see Motion dated October 20, 2017 by Randall C. Young, Esq. (Young Motion), and Young Affidavit, Exhibit A [Complaint] and Exhibit C [Penalty Evaluation]). ECL 71-1929 provides for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. Department staff has proven two days of violation (see Default Summary Report at 3 [Findings of Fact Nos. 6, 7, 9–11] and 6). The requested penalty is substantially below this statutory amount. Based on this record, the requested penalty of eight thousand four hundred thirty dollars (\$8,430) is supported and appropriate.

Department staff also requests that I direct respondent "to seed any exposed soils at the site with a conservation seed mix and restore the stream where the crossing was located to approximate the natural conditions by removing any temporary erosion control measures and stabilizing soils on the banks with a conservation seed mix" (Young Motion, at 3, ¶III). Staff's request is supported and appropriate.

I direct that respondent submit the civil penalty to the Department within thirty (30) days of the service of this order upon respondent. In addition, I direct that respondent, within sixty (60) days of service of this order upon him, submit proof to the Department, including but not limited to photographs, showing that he seeded any exposed soils at the site with conservation seed mix and restored the stream where the crossing was located to approximate natural conditions by removing any temporary erosion control measures and stabilizing soils on the banks with a conservation seed mix.

Lastly, I concur with the recommendation to amend the pleadings, pursuant to CPLR 2001, to correct the name of the Town where the property is located.

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

- I. The pleadings are amended as stated in the default summary report. The motion to conform the pleadings to the proof is denied as academic.
- II. Department staff's motion for default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Gregory C. Hemmerich waived his right to a hearing.
- III. Moreover, based upon proof of the facts submitted, respondent Gregory C. Hemmerich is adjudged to have violated ECL 17-0501 by draining or otherwise discharging sediment laden waters into Abijah Creek in contravention of the State's water quality standard for turbidity.
- IV. Within thirty (30) days of the service of this order upon respondent Gregory C. Hemmerich, respondent shall pay a civil penalty in the amount of eight thousand four hundred thirty dollars (\$8,430) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. Within sixty (60) days of service of this order upon respondent Gregory C. Hemmerich, respondent shall submit proof, including but not limited to photographs, that respondent seeded any exposed soils at the site with a conservation seed mix and restored the stream where the crossing was located to approximate the natural conditions by removing any temporary erosion control measures and stabilizing soils on the banks with a conservation seed mix.
- VI. The penalty payment and proof of seeding and restoration of the site shall be sent to the following address:

Randall C. Young, Esq.
Regional Attorney
NYSDEC Region 6
317 Washington Street
Watertown, New York 13601
- VII. Any questions or other correspondence regarding this order shall also be addressed to Randall C. Young, Esq. at the address referenced in paragraph VI of this order.

VIII. The provisions, terms and conditions of this order shall bind respondent Gregory C. Hemmerich, and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Basil Seggos
Commissioner

Dated: Albany, New York
May 17, 2018

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 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 (NYCRR) Part 703,

- by -

**DEFAULT SUMMARY
REPORT**

DEC Case No.
R6-20170105-02

GREGORY C. HEMMERICH,

Respondent.

Appearances of Counsel:

- Thomas Berkman, Deputy Commissioner and General Counsel (Randall C. Young, Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- No appearance for respondent

By notice of hearing and complaint dated July 13, 2017, staff of the New York State Department of Environmental Conservation (DEC or Department) commenced this enforcement proceeding against respondent Gregory C. Hemmerich (respondent) for alleged violations of ECL article 17 and 6 NYCRR part 703. Department staff's complaint alleges respondent drained or otherwise discharged sediment laden waters into Abijah Creek from respondent's logging operations on property located adjacent to 25301 County Route 93 in the Town of Worth, Jefferson County, New York in violation of ECL 17-0501.¹

The complaint seeks an order of the Commissioner: (i) finding respondent violated ECL 17-0501; (ii) assessing a civil penalty in the amount of eight thousand four hundred thirty dollars (\$8,430); (iii) directing respondent to implement best management practices from the NYS Forestry Best Management Practices Field Guide to minimize erosion and prevent sedimentation from roads, skid trails, and log landings; (iv) directing respondent to seed exposed soils with a conservation seed mix and restore the stream where the crossing was located to the approximate

¹ As discussed below, Department staff's complaint identifies the town as Lorraine, although staff subsequently moved to correct the name of the town to Worth.

natural conditions by removing any temporary erosion control measures, and stabilizing soil on the banks with a conservation seed mix; and (v) imposing such other and further relief as may be just and appropriate under the circumstances. The notice of hearing instructed respondent that a written answer must be filed within twenty (20) days of respondent's receipt of the complaint.

Staff served the notice of hearing and complaint on respondent by certified mail on July 13, 2017, which were received by respondent on July 15, 2017 (see Affidavit of Service of April L. Sears, sworn to July 24, 2017). Respondent failed to file an answer to the complaint, and failed to appear at a pre-hearing conference scheduled for August 9, 2017, as directed in the cover letter and notice of hearing served with the complaint (see Affidavit of Randall C. Young [Young Affidavit], sworn to October 20, 2017, ¶¶ 9 and 10).

On October 20, 2017, Department staff submitted a written motion for default judgment and to conform the pleadings to the proof with supporting papers (see Appendix A, attached hereto [listing documents submitted on the motion]). Department staff served the motion and supporting papers on respondent by first class mail on October 20, 2017 (see Affidavit of Service by Mail of April L. Sears, sworn to November 10, 2017).

By letter dated October 30, 2017, the parties were advised the matter was assigned to Chief Administrative Law Judge (ALJ) James T. McClymonds. On February 6, 2018, the matter was reassigned to the undersigned ALJ.

Findings of Fact

The following facts are found based upon the documents submitted with and in support of staff's motion for a default judgment:

1. Respondent Gregory C. Hemmerich logged property adjacent to 25301 County Route 93 (a.k.a. O'Connor Road) in the Town of Worth, Jefferson County, New York (site) (see Young Affidavit, Exhibit A, Complaint ¶ 7; Affidavit of Mark Malone [Malone Affidavit], sworn to October 11, 2017, ¶¶ 3, 8, 9 and 10, Exhibits D, E 21 - 24; Affidavit of Stephanie Larkin [Larkin Affidavit], sworn to October 18, 2017, ¶¶ 3, 4, and 11).
2. The site is also known as Jefferson County Tax Parcel No. 121.00-1-62.1 containing 94 acres of land (see Malone Affidavit ¶ 9, Exhibit D).
3. Abijah Creek runs through the site and is a class C trout stream designated with a trout spawning standard C(TS) (see Young Affidavit, Exhibit A, Complaint ¶¶ 8 - 10; Malone Affidavit, ¶¶ 4 - 7, Exhibit D; Larkin Affidavit, ¶¶ 5, 8, and 10).²

² The site is located above the fourth tributary to Abijah Creek (see Young Affidavit, Exhibit A, Complaint, ¶¶ 8 and 9; Malone Affidavit, ¶ 7; Larkin Affidavit, ¶ 10) where that section of Abijah Creek is classified C(TS), or as trout waters suitable for trout spawning (see 6 NYCRR 847.5, Table 1, Item No. 160.1; see also 6 NYCRR 847.3[h]).

4. Mark Malone has been an Investigator with the Department's Division of Law Enforcement, Bureau of Environmental Crimes Investigation since 2013. Prior to that, he was an Environmental Conservation Officer for 11 years (see Malone Affidavit, ¶ 1).
5. On November 30, 2016, Investigator Malone investigated a complaint that muddy waters were entering Abijah Creek at the site (see Malone Affidavit, ¶ 2; Exhibits E1 – E28).³
6. During his November 30, 2016 investigation, Investigator Malone determined that logging had recently occurred at the site and witnessed brown turbid water flowing into Abijah Creek from the areas disturbed by respondent's logging operation (see Malone Affidavit ¶¶ 4 – 6 and 11; Exhibits E1 – E28).
7. Respondent's logging equipment was located at the site (see Malone Affidavit, ¶ 8, Exhibits E21 – E25).
8. Stephanie Larkin is a Habitat Biologist employed in the Department's Region 6 offices since August 2015 whose duties include inspecting activities in or near streams and freshwater wetlands to determine compliance with the ECL (see Larkin Affidavit, ¶¶ 1 – 2).
9. On December 1, 2016, Ms. Larkin and Investigator Malone inspected the site and witnessed the following at the site:
 - a. Logging equipment;
 - b. Areas where logging activity occurred;
 - c. Skid trails;
 - d. Exposed soils that were churned and deeply rutted from logging equipment;
 - e. Skid trails crossing a small stream that discharged into Abijah Creek; and
 - f. Mud brown and opaque waters flowing into Abijah Creek from the site (see Larkin Affidavit ¶¶ 3 – 5 and 8, Exhibits F1 – F17; Malone Affidavit, ¶ 12).
10. Department staff found no evidence of any erosion or sediment control measures or best management practices for the control of storm water during logging being used at the site (see Larkin Affidavit ¶ 7, Exhibits F1 – F17).
11. During Department staff's inspections of the site, there was a substantial visible contrast between the natural condition of Abijah Creek upstream from the site and where muddy waters entered Abijah Creek at the site (see Larkin Affidavit, ¶¶ 5 and 7, Exhibits F1 – F18; Malone Affidavit, ¶¶ 5 – 6; Exhibits E1 – E20 and E26 - E28).

³ The Malone affidavit references November 30, 2017 as the date a complaint was received about a "water quality violation in progress," but the photographic exhibits attached to the affidavit indicate the inspection occurred on November 30, 2016.

12. On December 13, 2016, Department staff met respondent at the site, and respondent acknowledged that he was logging the site and noticed water running off the site into the creek (see Larkin Affidavit, ¶ 11).
13. During the December 13, 2016 meeting, Department staff directed respondent to implement best management practices to prevent further contamination of Abijah Creek (see id.).
14. Respondent was served with the notice of hearing and complaint on July 15, 2017 (see Affidavit of Service of April L. Sears, sworn to July 24, 2017).
15. Respondent failed to file an answer to the complaint, and failed to appear at a pre-hearing conference scheduled for August 9, 2017, as directed in the cover letter and notice of hearing served with the complaint (see Young Affidavit, ¶¶ 9 and 10).

Discussion

Motion for Default

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint unless extended by staff or ruling of the ALJ (see 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, "and failure to attend constitutes a default and a waiver of the opportunity for a hearing" (6 NYCRR 622.8[c]; see also 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Staff's motion must contain: (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to appear or to file a timely answer; and (iii) a proposed order (see 6 NYCRR 622.15[b][1] - [3]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint and failed to appear at a pre-hearing conference scheduled for August 9, 2017, as directed in the cover letter and notice of hearing served with the complaint; and (iii) Department staff submitted a proposed order. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15. Staff also served respondent with a copy of the motion for default judgment and supporting papers (see Affidavit of Service of April L. Sears, sworn to November 10, 2017).

As the Commissioner has held, “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (Matter of Alvin Hunt, d/b/a Our Cleaners, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim” (Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3).

In this case, Department staff’s submissions in support of the motion for a default judgment provide proof of the facts sufficient to support staff’s claim that respondent drained or otherwise discharged sediment laden waters into Abijah Creek from respondent’s logging operations causing a condition in contravention of the Department’s water quality standards (6 NYCRR 703.2), a violation of ECL 17-0501. Specifically, respondent caused an increase in turbidity that created a substantial visible contrast to the natural conditions of Abijah Creek (see 6 NYCRR 703.2 [turbidity standard]).

Penalty and remedial relief

Department staff seeks a penalty in the amount of eight thousand four hundred thirty dollars (\$8,430), and staff’s submissions on the motion for a default judgment support the requested penalty. Staff discussed using the Division of Water Technical and Operational Guidance Series (TOGS) 1.4.2, Compliance and Enforcement of SPDES Permits (June 24, 2010), with an inflation adjustment of eight percent in accordance with a guidance memorandum prepared by Joseph DiMura, Director of Bureau of Water Compliance to Regional Water Engineers, dated April 6, 2016. Staff’s penalty calculation is based on a single day of violation. Staff provided its written penalty calculation in support of staff’s request (see Young Affidavit, Exhibit C).

Department staff assigns a base penalty of \$5,000 established by TOGS 1.4.2 Appendix C for a discharge at an unpermitted facility and causing or contributing to a water quality standard violation. Staff then applied an environmental significance multiplier of 1.25 to the base penalty due to the moderate impact to the environment, the violation of water quality standards and threat to the designated use of a class C(TS) stream (see TOGS 1.4.2 at 47). Appendix D of TOGS 1.4.2 sets forth penalty adjustment factors to be considered by staff (see TOGS 1.4.2, at 49). The factors are culpability, cooperation, history of noncompliance, and unique or other factors. Each of the factors sets forth multiplier ranges for purposes of adjusting the base penalty. Staff assigned a multiplier of 1.25 for culpability because respondent failed to respond quickly to minimize damage caused by respondent’s logging operations. Respondent failed to use best management practices to prevent the muddy conditions caused by his logging operations at the site from affecting Abijah Creek (see Finding of Fact No. 10). For cooperation and history of non-compliance, staff assigned a multiplier of 1.0. Staff did not discuss unique or other factors. Lastly, Department staff adjusted the base penalty for inflation using an inflation adjustment rate of 8 percent. Accordingly, staff’s penalty calculation results in a total penalty of \$8,437.50 ($\$5,000 \times 1.25 \times 1.25 \times 1.08$), which staff reduced or rounded down to \$8,430.

ECL 71-1929, which is applicable here, provides, in part, that “[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 thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation” (ECL 71-1929[1]). Department staff proof demonstrates that violations occurred on at least two days, November 30 and December 1, 2016, (see Findings of Fact Nos. 6, 7, 9, 10 and 11), which would result in a maximum penalty of \$75,000. Staff demonstrated that Abijah Creek is a trout spawning stream and described the adverse impacts that increased sedimentation can have on trout and other salmonids habitat, and the impacts on the invertebrate that are a food source for adult and juvenile fish (see Larkin Affidavit, ¶ 12). The requested penalty is a small fraction of the maximum penalty allowed by law. Although nothing in this record supports the inflation adjustment rate used by Department staff, I find the penalty requested by staff is supported and appropriate.

For remedial relief, Department staff requests that the Commissioner direct respondent to seed any exposed soils at the site with conservation seed mix and restore the stream where the stream crossing was located to approximate natural conditions by removing any temporary erosion control measures and stabilizing soils on the banks with a conservation seed mix. Staff’s request is supported and appropriate. Because respondent completed logging operations at the site, staff no longer requests that respondent be directed to implement best management practices to minimize erosion and prevent sedimentation from the site as requested in the complaint.

Motion to Conform the Pleadings to the Proof

Department staff’s complaint alleged the violations occurred in the Town of Lorraine, Jefferson County. Staff’s motion and supporting papers demonstrate that the violations occurred in the Town of Worth, Jefferson County. Staff alleged the correct street address of the site in its complaint, 25301 County Route 93, which lies in the Town of Worth. Staff moves to conform the pleadings to the proof to correct the name of the town referenced in paragraphs 4, 7 and 8 of the complaint by replacing Lorraine with Worth. Staff’s proof includes the Malone Affidavit with a page from the 2017 Town of Worth tax roll demonstrating the site lies within the Town of Worth. I also note that properties neighboring the site in the Town of Worth have a mailing address of Lorraine although they are situated in Worth (see Malone Affidavit, Exhibit D).

Motions to conform the pleadings to the proof or evidence are authorized by CLPR 3025(c). Although prior Commissioner orders and hearing reports have granted staff’s motion to conform the pleadings to the proof when a matter was decided on a motion for order without hearing (see e.g. Matter of Hornburg, Order of the Commissioner, April 17, 2006; Matter of Wilder, Order of the Commissioner, September 27, 2005; Matter of Pieropan, Order of the Commissioner, November 3, 2006), the better course is to reserve the use of such a motion to conform the pleadings to the evidence proffered at hearing (see e.g. Matter of Able Energy New York, Inc., Order of the Commissioner, March 18, 2016; Matter of the Upstar USA Group, Order of the Commissioner, November 2, 2016; Matter of Russell Distribution Co., LLC, Order of the Commissioner, January 23, 2017; Matter of Timperio, Order of the Commissioner, July 2, 1992;

see also Siegel, NY Prac § 404 at 707 [5th ed 2011]). Motions to amend the pleadings prior to a hearing are addressed by CPLR 3025(b) (see Siegel, NY Prac § 237 at 409 [5th ed 2011]) and require leave of the ALJ. I also note that proof at hearing requires a higher burden, preponderance of the evidence, than the motion for default's proof of facts sufficient to support the claim. Accordingly, I deny staff's motion to conform the pleadings to the proof.

Staff's complaint, however, provided respondent with adequate notice of the factual basis for and the actual nature of the violations, and the complaint references the correct street address of the site. I conclude that the reference to the Town of Lorraine rather than the neighboring Town of Worth is not fatal to staff's case. CLPR 2001 authorizes the court to disregard or correct, sua sponte, any defect, provided any substantial right of a party is not prejudiced (see Albilis v Hillcrest Gen. Hosp., 124 AD2d 499, 500 [1st Dept 1986]). In this matter, correction of the pleadings is appropriate to ensure the correct town name is used in any Commissioner's order issued in this matter. Respondent is not prejudiced by this correction because the complaint references the correct street address and location of Abijah Creek and its unnamed tributary. As referenced above, some properties in the Town of Worth have a Lorraine mailing address. In addition, respondent was served with a copy of staff's motion for default and to conform the pleadings to the proof regarding the correct name of the town, and respondent has not appeared in the matter or opposed the motion. Accordingly, I hereby deem the pleadings to be amended to correct the town's name to Worth as reflected in this summary report.

Conclusions of Law

By draining or otherwise discharging sediment laden waters into Abijah Creek from his logging operations, respondent caused a condition in contravention of the Department's water quality standards in violation of ECL 17-0501.

Recommendations

Based upon the foregoing, I recommend the Commissioner issue an order:

- A. Granting Department staff's October 20, 2017 motion for default judgment pursuant to 6 NYCRR 622.15, holding respondent Gregory C. Hemmerich violated ECL 17-0501.
- B. Denying Department staff's motion to conform the pleadings to the proof.
- C. Adopting the amendment of the pleadings as provided in this hearing report.
- D. Directing respondent Gregory C. Hemmerich to pay a civil penalty of eight thousand four hundred thirty dollars (\$8,430) for the above referenced violations.
- E. Directing respondent Gregory C. Hemmerich to submit payment of the eight thousand four hundred thirty dollars (\$8,430) by certified check payable to

NYSDEC within thirty (30) days of service of the Commissioner's order on respondent to the following:

Randall C. Young, Esq.
Regional Attorney
NYSDEC
317 Washington Street
Watertown, New York 13601-3787.

- F. Directing such other and further relief as the Commissioner may deem just and appropriate under the circumstances.

_____/s/_____
Michael S. Caruso
Administrative Law Judge

Dated: March 14, 2018
Albany, New York

APPENDIX A

Matter of Gregory C. Hemmerich
DEC File No. R6-20170105-02
Motion for Default Judgment

1. Cover letter, dated October 20, 2017, addressed to Chief Administrative Law Judge James McClymonds of the Department's Office of Hearings and Mediation Services, attaching staff's motion papers
2. Notice of Motion dated October 20, 2017
3. Motion dated October 20, 2017
4. Affidavit of Randall C. Young, sworn to October 20, 2017, attaching Exhibits A, B and C:
 - A. Cover letter, Notice of Hearing and Complaint, all dated July 13, 2017
 - B. Email correspondence from Randall C. Young to Ms. Hemmerich, dated August 8, 2017
 - C. Penalty evaluation by R. Young, dated June 29, 2017
5. Affidavit of Mark Malone, sworn to October 11, 2017, attaching Exhibits D and E1 - E26:
 - D. 2017 Town Tax Roll for the Town of Worth, Jefferson County, New York page 84, relating to property located at 25301 County Rte 93
 - E1 – E26. 28 Photographs (renumbered E1 - E28 for purpose of this report; with some photographs being duplicated), including photographs of Abijah Creek, unnamed tributary, logging equipment, sediment runoff from logging operation, logging road crossing stream and turbid waters, with descriptions of each photograph, taken on November 30, 2016
6. Affidavit of Stephanie Larkin, sworn to October 18, 2017, attaching Exhibits F1 – F18 and G:
 - F1 – F18. 18 Photographs, including photographs of Abijah Creek, unnamed tributary, sediment runoff from logging operation, logging road crossing stream and turbid waters, with descriptions of each photograph, taken on December 1, 2016
 - G. Sketch map of area depicting logging operation locations, logging road, unnamed tributary, Abijah Creek and areas where turbid water were encountered
7. Affidavit of Service of April L. Sears, sworn to July 24, 2017 with signed USPS return receipt attached (service of Notice of Hearing and Complaint)
8. Affidavit of Service by Mail of April L. Sears, sworn to November 10, 2017 (service of motion papers)
9. Draft Order