

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Articles 24 of
the Environmental Conservation
Law of the State of New York
and 6 NYCRR Part 663 by:

ORDER ON CONSENT

File No. R4-2009-0910-144

- by -

Gayle Blakesley
952 County Route 32
Malden Ridge, New York 12155

Respondent

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation ("Department or DEC") is an agency of the State charged with jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.

2. Respondent, Gayle Blakesley, 952 County Route 32, Malden Ridge, New York 12155 on or about July 18, 2009 and August 12, 2009 constructed a culvert and a share driveway approximately 15 feet by 30 feet long in the adjacent area of protected wetland EC-103 on a right of way area believed to be shared with her neighbor, Brenda Boice

3. Respondent is a "person" as defined in 6 NYCRR §663.2(w).

Freshwater Wetlands Violations

6. ECL §24-0701(2) and 6 NYCRR §663.4(d)(20) provide that no person shall place fill in a wetland or its adjacent area without a permit from DEC.

7. Respondent violated ECL §24-0701(2) and 6 NYCRR §663.4(d)(20) by constructing the shale driveway in the adjacent area of wetland EC-103 without a permit from DEC.

8. ECL § 24-0701(2) and 6 NYCRR §663.4(d)(25) provide that no person shall conduct grading in a wetland or its adjacent area without a permit from DEC.

9. Respondent violated ECL § 24-0701(2) and 6 NYCRR §663.4(d)(25) by grading the adjacent area of wetland EC-103 without a permit from DEC.

GENERAL

10. Respondent agrees that the work provided for in this Order is to be undertaken only for the purpose of restoring the disturbed portion of the adjacent area of wetland EC-103 to its former condition.

11. ECL Section 71-2303 provides for a civil penalty of up to \$3,000 for each violation of ECL Article 24 and any permit, rule or regulation issued pursuant to Article 24.

12. Respondent has affirmatively waived her right to a hearing on this matter as provided by Law and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained within this Order.

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

I. PENALTY

With respect to the violations identified in this Order, the Department assesses against Respondent a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) which shall be payable by certified check or money order made out to the New York State Department of Environmental Conservation and submitted along with a signed copy of this Order.

II. SETTLEMENT and RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in Paragraphs 3 through 12 of this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph IIA of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

III. FAILURE, DEFAULT AND VIOLATION OF ORDER

A. Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondent by the Department.

IV. **SCHEDULE OF COMPLIANCE**

Respondent shall commence implementation of and implement the activities described in Exhibit A, which is an enforceable part of this Order, in accordance with its terms.

V. **REPORTS**

All reports required by this Order shall be made to the Region 4 Office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Supervisor of Natural Resources.

VI. **ACCESS**

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.

VII. **BINDING EFFECT**

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VIII. **REVIEW OF SUBMITTALS**

A. 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 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 submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

IX. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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 this Order by Respondent and its successors (including successors in title) and assigns.

X. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or a designee signs it.

XI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner.

XII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in Paragraphs 3 through 12 of this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph XII of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: _____, 2009
Rotterdam, NY

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY: _____
Eugene J. Kelly
Regional Director - Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waive the right to a hearing herein as provided by law, and agree to be bound by the provisions, terms and conditions contained in this Order.

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

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, 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 s/he executed the same in his capacity, and that by the signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Respondent shall remove the culvert and shale from the adjacent area of the wetland to an upland location and restore the disturbed area of the adjacent area of the wetland to its original condition. The area shall be graded and mulched.
2. Respondent shall notify the Department in writing a minimum of two business days prior to commencing the restoration plan. Respondent shall further notify the Department within two business days of completing the work in the restoration plan.
3. Respondent shall not conduct any activities in wetland EC-103 or its adjacent area except as required in Paragraphs 1 and 2.