

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8855

August 14, 2018

Sean Meagher
c/o Catskill Marina
P.O. Box 284
Catskill, New York 12414

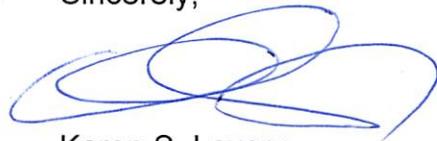
Re: Order on Consent
R4-2017-0726-231

Dear Mr. Meagher:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: N. Baker
T. Brady
J. Rider



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of
Article 15 of New York State Environmental
Conservation Law

ORDER ON CONSENT

R4-2017-0726-231

-by-

Catskill Marina
P.O. Box 284
Catskill, NY 12414

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (“the Department”) is a department of the State of New York which, pursuant to Titles 1 and 5 of Article 15 of the Environmental Conservation Law (ECL), is authorized to regulate and control the water resources of the State of New York.
2. Regulations at 6 NYCRR 608.5 provides that *“No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the State or in marshes, estuaries, tidal marches and wetlands that are adjacent to an contiguous at any point to any of the navigable waters of the State, and that are inundated at mean high water level or tide, without a permit issued pursuant to this Part.”*
3. Respondent, Catskill Marina, owns a parcel of land at 14 Greene Street, Catskill, NY 12414.

Facts

4. On May 4, 2017, while on boat patrol, Department of Law Enforcement (“DLE”) staff found the banks along the Catskill Creek, a class “C” stream, at the Catskill Marina had been excavated. The bulk head failed and it was being removed. A large pile of dirt was onsite along the creek. An excavator was parked along the bank. On May 17, 2017, DLE staff inspected the property and the work being done. No work had been done since DLE staff had noticed it on May 4, 2017. Along the Catskill Creek at Catskill Marina the area remained excavated. Along the bank sat a large excavator. No work was being done at this time.
5. Regulations at 6 NYCRR 608.2(a) provides that “*Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.*”
6. Respondent violated regulations at 6 NYCRR 608.2 by failing to obtain a permit before excavating along the banks of a Class “C” stream.
7. ECL Section 71-1127(1) provides for a penalty of up to two thousand five hundred dollars (\$2,500) for each violation of regulations at 6 NYCRR 608.2 and five hundred dollars (\$500) per day for continuing violations.

Civil Penalty

8. ECL 15-0505 provides for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation of Title 6, or the rules or regulations promulgated thereto by the Commissioner of the Department.

Waiver of Hearing

9. In settlement of Respondent’s civil liability for the aforesaid violations, Respondent has waived its right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on Consent (“Order”) pursuant to the provisions of Article 15 of the ECL, and has agreed to be bound by the provisions, terms and conditions herein.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

I. PENALTIES

Respondent is hereby assessed a civil penalty in the amount of \$2,500 for the violations stated herein which shall be payable with the return of the signed and notarized Order. **Payments shall be made by bank or certified check or money order made out to the Department of Environmental Conservation.**

II. STANDARD PROVISIONS

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: _____, 2018
Rotterdam, New York

Basil Seggos,
Commissioner
New York State Department of
Environmental Conservation

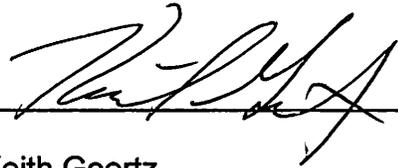
By: _____

Keith Goertz
Regional Director
Regional 4

DATED: August 13, 2018
Rotterdam, New York

Basil Seggos,
Commissioner
New York State Department of
Environmental Conservation

By: _____


Keith Goertz
Regional Director
Regional 4

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:

Department of Environmental Conservation
Region 4, Attn: Karen Lavery
1130 North Westcott Road
Schenectady, NY 12306

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

Department of Environmental Conservation
Region 4, Attn: Karen Lavery
1130 North Westcott Road
Schenectady, NY 12306

Effective Date and Duration. The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

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.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or 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.

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 this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in paragraph B.A above, 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 the Commissioner's 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.

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 Respondents If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

Schedule of Compliance

1. Effective immediately, all fill material currently on site will be captured by silt fence until such time as it can be stabilized into the bank.
2. Effective immediately, the work area must be isolated from stream flow.
3. Effective immediately, turbidity curtains shall be used in the water to prevent escapement of fill material into stream while backfilling.
4. Within 45 days of the effective date of this Order, the excavated portion of stream bank will be backfilled using the fill material that was piled on site.
5. The repaired portion of bank will not encroach further into the stream, and will follow the same line that existed prior to violation.
6. Within 45 days of the effective date of this Order, the damaged steel bulkheads will be repaired to the exact specifications and lines that existed prior to violation.
7. All exposed soil shall be seeded and mulched upon completion.