

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

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Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 3758

December 6, 2013

Lawrence Eckhardt  
5168 South Stephentown Road  
Stephentown, New York 12168

Re: Order of Consent  
R4-2013-0820-109

Dear Mr. Eckhardt:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assitant Regional Attorney  
Region 4

Enclosure

cc: S. Swenson

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law Article 15

ORDER ON CONSENT  
File No. R4-2013-0820-109

-by-

Lawrence Eckhardt  
5168 South Stephentown Road  
Stephentown, New York 12168

Respondent

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WHEREAS:

1. The Department of Environmental Conservation (“Department”) is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law (ECL). In particular, DEC regulates and controls the water resources of the state pursuant to ECL §15-0101 *et seq* and the rules and regulations promulgated, in part, under 6 NYCRR Part 608.
2. Lawrence Eckhard, of 5168 South Stephentown Road, Stephentown, New York, owns property located on Gould Road, Stephentown, New York which includes a portion of the Kinderhook Creek (“site”).
3. Respondent is a "person," as defined in 6 NYCRR § 360-1.2(b) (108).
4. The Kinderhook Creek is a Class C(ts) stream and therefore its banks and beds are protected.
5. Regulations at 6 NYCRR 608.1(a) and (b) defines banks and bed as the following:
  - (a) Banks means that land area immediately adjacent to, and which slopes toward, the bed of a watercourse, and which is necessary to maintain the integrity of a watercourse. For purposes of this Part, a bank will not be considered to extend more than 50 feet horizontally from the mean high water line; with the following exception: Where a generally uniform slope of 45 degrees (100 percent) or greater adjoins the bed of the watercourse, the bank is extended to the crest of the slope or the first definable break in slope, either a natural or constructed (i.e. road or railroad grade) feature, lying generally parallel to the watercourse.
  - (b) Bed means that land area of a watercourse covered by water at mean high water.
6. Department staff inspected the site on July 16, 2013.

### First Violation

7. At the time of the July 16, 2013 inspection, Department staff observed fill placed within the banks of the Kinderhook Creek.
8. Regulations at 6 NYCRR 608.2 provide that “*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.*”
9. Respondent did not possess a permit to disturb the bed or banks of the Kinderhook Creek.
10. Respondent violated regulations at 6 NYCRR 608.2 by placing fill within the regulated banks of the Kinderhook Creek without first obtaining a permit.
11. ECL Section 71-1127 provides for a civil penalty of up to \$2,500 per day for a violation of Article 15 and up to \$500 for each day that such violation continues. Injunctive relief is also available.
12. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein.

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

- I. With respect to the aforesaid violations, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is assessed against the Respondent for the above violations. Payment of the civil penalty is due upon Respondent’s return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC and returned with the signed and notarized Order by the Respondent to the Department.
- II. Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.
- III. The provisions of this Order shall be deemed to bind Respondent, his agents, employees, and all persons, firms, corporations acting under or for it.
- IV. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.
- V. 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 the provisions hereof by Respondent, his directors, officers, employees, servants, agents, successors or assigns.

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

VII. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent=s compliance with this Order, the ECL and regulations promulgated thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

Steven Swenson  
Regional Habitat Office  
New York State Department  
of Environmental Conservation  
Region 4 - Stamford Office  
65561 State Highway 10, Suite 1  
Stamford, NY 12167-9503  
607-652-2645

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, his agents, his servants, his employees, his successors and his assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent=s employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

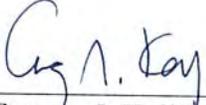
D. Respondent=s right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: 12/5/ 2013  
Rotterdam, NY

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Eugene J. Kelly  
Regional Director  
Region 4



## Schedule of Compliance

1. By October 30, 2013, all fill shall be removed from the bed and banks of the stream. Once the fill is removed, the disturbed areas shall be seeded and mulched. All fill shall be disposed of in an upland area a minimum of 100 feet from any water body.