

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3849

November 4, 2013

Ed Derosia
21655 CR 17
Roscoe, NY 12776

Re: Order of Consent
R4-2013-0814-103

Dear Mr. Derosia:

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

This will also acknowledge receipt of \$1500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: S. Swenson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT
File No. R4-2013-0814-103

-by-

Ed Derosia
21655 CR 17
Roscoe, New York 12776

Respondent

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. Alvin Brown, owns property located at 315 Rockland Road, Colchester, New York (Delaware County) (“site”). The contact person responsible for the permitted work is Ed Derosia of 21655 CR 17, Roscoe, New York.
3. Respondent is a "person," as defined in 6 NYCRR § 360-1.2(b) (108).
4. Respondent Ed Derosia, 21655 CR 17, Roscoe, New York, is in possession of an Article 15 Permit (DEC ID# 09999-00137/00003), effective September 3, 2009, which authorizes him to “*reconstruct a portion of a high flow channel of the Beaver Kill to facilitate dewatering of a ponded area and to dredge gravel/debris/sediment from within the ponded area.*”
5. The Beaver Kill is a Class C(t) stream and therefore its banks and beds are protected.
6. 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.

7. Department staff inspected the site on November 30, 2011, December 28, 2011 and June 26, 2013.

First Violation

8. At the time of the June 26, 2013 inspection, Department staff observed several piles of dredged material within the permitted work area.

9. General Condition Number 5 of the permit provides that *“any material dredged in the conduct of the work herein permitted shall be removed evenly, without leaving large refuse piles, ridges across the bed of a waterway or a floodplain or deep holes that may have a tendency to cause damage to navigable channels or to the banks of a waterway.”*

10. Respondent violated General Condition Number 5 of the permit by leaving piles of dredged material within the permitted work area.

Second Violation

11. At the time of the June 26, 2013 inspection, Department staff observed that erosion controls were not installed during construction or at any time during the duration of the permit.

12. Special Condition Number 4 of the permit provides that *“filter fabric barriers, silt fencing, or other methods to control erosion are to be used on the down slope edge of any disturbed areas.”*

13. Respondent violated Special Condition Number 4 of the permit by failing to install erosion controls during construction or at any time during the duration of the permit.

Third Violation

14. At the time of the December 28, 2011 inspection, Department staff observed a culvert which Respondent had installed in a secondary channel of the Beaver Kill and subsequently removed.

15. Special Condition Number 1 of the permit provides that *“all work shall be in accordance with attached plans and narratives (Attachments A, B, C).”*

16. Respondent violated Special Condition Number 1 of the permit by installing a culvert, not addressed in the plans, in a secondary channel of the Beaver Kill.

Fourth Violation

17. At the time of the June 26, 2013 inspection, Department staff observed disturbance to the bed and banks of the stream including the installation and removal of a culvert as well as failure to utilize erosion control.

18. Special Condition Number 12 of the permit provides that “*disturbance to the bed and banks of the stream shall be kept to the minimum necessary to complete the project.*”

19. Respondent violated Special Condition Number 12 of the permit by failing to minimize the disturbance to the bed and banks of the stream.

20. 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.

21. 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 FIVE HUNDRED DOLLARS (\$1,500) 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 Respondents' employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

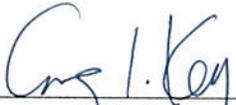
D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes 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: 6/1 2013
Rotterdam, NY

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

BY:


Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Ed Derosia

Respondent hereby consents to the issuance and entry of the foregoing Order, waives his rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Ed Derosia

DATE: 10/30/13

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

On the 30 day of OCT in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Ed Derosia, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Arthur C Edel
Notary Public
Qualified in the County of:
My Commission Expires:

ARTHUR C. EDEL
NOTARY PUBLIC STATE OF NEW YORK
DELAWARE COUNTY
LIC. #01ED6237023
COMM. EXP. 03/14/2014

Schedule of Compliance

1. By October 30, 2013, all piles of fill within the bed and banks of the secondary channel to the Beaver Kill shall be removed to an upland location a minimum of 100 feet from any water body.
2. By October 30, 2013, all unstable banks within the secondary channel of the Beaver Kill shall be graded to a 1:3 slope, then seeded and mulched.
3. Respondent shall immediately maintain records of all mining activities to ensure that the threshold of 750 cubic yards annually is documented. Records must be available for review within 48 hours of request by Department staff.