

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
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CERTIFIED - RETURN RECEIPT REQUESTED

7017 1070 0001 0125 9098

November 29, 2018

Mr. Lou Pontillo  
Fagawi Rod & Gun Club, Inc.  
525 Riverleigh Ave. #192  
Riverhead, NY 11901

Re: Order on Consent  
R4-2018-1023-193

Dear Mr. Pontillo:

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

This will also acknowledge receipt of \$750 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher  
Assistant Regional Attorney  
Region 4

Enclosure

cc: T. Brady



Department of  
Environmental  
Conservation

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of Article 15  
of the Environmental Conservation Law ("ECL")  
and Title 6 of the Official Compilation of  
Codes, Rules and Regulations of the  
State of New York ("6 NYCRR"),

-by-

**ORDER ON CONSENT**  
File No.: R4-2018-1023-193

Fagawi Rod & Gun Club, Inc.  
525 Riverleigh Ave., #192  
Riverhead, NY 11901,

Respondent.

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**WHEREAS:**

**Jurisdiction**

1. The New York State 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, the Department regulates and controls the water resources of the state pursuant to ECL Article 15, and Part 608 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR") *et. seq.*

**Respondent**

2. Respondent, Fagawi Rod & Gun Club, Inc., is a domestic not-for-profit corporation and the owner of a parcel of property located on Murphy Hill Road in the Town of Colchester, New York identified as Delaware County Tax Parcel 322.-2-14 ("Site").

3. Respondent is a person as defined by regulation 6 NYCRR § 608.1(y).

**VIOLATION**

4. On October 11, 2018, Department staff inspected the Site, located on Murphy Hill Road in the Town of Colchester, Delaware County, New York.

5. During the October 11, 2018 inspection, Department staff observed that Respondent had installed a drain pipe ("Footer Drain"), consisting of an approximately three (3)-inch diameter PVC pipe, to drain groundwater away from an existing structure on the Site premises.

6. The Footer Drain deposits drainage water into a stream identified as Murphy Hill Brook (FIN# D-70-49-1) which has a stream class and standard of "A(T)" pursuant to regulations at 6 NYCRR §§ 701.6 and 701.25(a).

7. During the October 11, 2018 inspection, Department staff further observed that fill material had been deposited in the stream bed and along the banks of Murphy Hill Brook, as well as on top of the Footer Drain at the point where it drains into the stream.
8. Respondent did not obtain a permit from the Department prior to installation of the Footer Drain or the deposit of fill into the stream bed and banks.
9. ECL § 15-0501(1) provides, in relevant part, that “no person or public corporation shall change, modify or disturb the course, channel or bed of any [classified] stream . . . . or remove any sand, gravel or other material from the bed or banks of such a stream without a permit . . . .”
10. Regulation 6 NYCRR § 608.2(a) likewise provides, in relevant part, 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.”
11. Respondent’s installation of the Footer Drain and deposit of fill into the stream bed and banks of Murphy Hill Brook are in violation of ECL § 15-0501(1) and 6 NYCRR § 608.2(a).

#### **Civil Penalty**

12. ECL § 71-1127(1) provides, in relevant part, that: “Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 . . . . or who fails to comply with any rule, regulation, determination or order of the department heretofore or hereafter promulgated pursuant to article 15 . . . . shall be liable for a civil penalty of not more than two thousand five hundred dollars for such violation and an additional civil penalty of not more than five hundred dollars for each day during which such violation continues[.]”

#### **Waiver of Hearing**

13. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and the conditions of this Order.

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

I. **Civil Penalty.** Respondent is hereby assessed a civil penalty in the amount of SEVEN HUNDRED FIFTY DOLLARS (\$750). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by money order, or company or bank check made payable to NYS Department of Environmental Conservation.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner’s name, facility name and address, contact name, and phone number.

III. **Settlement.** Timely payment of the civil penalty and the implementation of the approved EBP(s) will be considered full compliance with the terms and conditions of this Order, and is accepted as full settlement of the violations described above.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting under or controlled by it.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **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 the provisions hereof by Respondent, its directors, officers, employees, agents, successors or assigns.

VII. **Modification.** 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, such change to be made only upon written agreement of the parties.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary for the Department to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

X. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

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

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors,

officers, employees, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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. Review of Submitted Documentation.**

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

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed 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 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 the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal 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 submittal 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.

4. 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.

XII. **Communications.** Communications shall be sent to:

For Department:

NYS Department of Environmental Conservation  
ATTN: Trevor Brady, Ecologist 1  
65561 State Highway 10, Suite 1  
Stamford, NY 12167-9503

For Respondent:

Fagawi Rod and Gun Club, Inc.  
525 Riverleigh Ave., #192  
Riverhead, NY 11901  
ATTN: Lou Pontillo

DATED: Rotterdam, New York  
November 28, 2018

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



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Keith Goertz  
Regional Director  
Region 4



## **SCHEDULE OF COMPLIANCE**

1. Respondent shall immediately cease all earthmoving and disturbance activity within the bed and banks of the protected stream except as specifically provided for in this Schedule of Compliance.
2. Prior to fill removal, silt fencing shall be installed along any areas of disturbance, to prevent turbid water from entering the stream and wetland. These erosion control structures shall remain in place until the area is re-vegetated. They shall be removed when vegetation cover is at least 80%.
3. Equipment operation in the active channel is prohibited.
4. Respondent shall cause no discharge of sediment or turbid waters to wetlands or waterbodies. During stream work, the water below the work area shall remain as clear as the flowing water above the work site.
5. Disturbance to the bed and banks of the stream shall be kept to the minimum necessary to complete the project. Any exposed soil shall be shaped, seeded, and mulched upon completion of project.
6. **All work shall be completed within the 2019 Allowable Work Window for NYS Protected Streams: June 15 to September 30, 2019.**
7. Upon completion of all Required Work (as set forth below), Respondent shall submit photo documentation to the Department by email to Trevor Brady ([trevor.brady@dec.ny.gov](mailto:trevor.brady@dec.ny.gov)), or by mail to:

NYS Department of Environmental Conservation  
ATTN: Trevor Brady, Ecologist 1  
65561 State Highway 10, Suite 1  
Stamford, NY 12167-9503

8. Compliance with this Schedule shall not be a defense to subsequent violations

## **REQUIRED WORK**

1. Respondent shall remove all fill material that has been added to the banks of the stream.
2. Respondent shall restore the west bank of Murphy Hill Brook to its original elevation and contours by removing fill material.
3. If Respondent finds it necessary to leave fill in place to protect the pipe in the immediate vicinity of the footer drain, Respondent shall submit a detailed plan for Departmental approval which indicates exactly how much fill will remain above the pipe and describes how the bank will be graded to a **minimum** slope of 2H:1V.

- a. If found necessary, the plan shall be submitted to the Department **by May 16, 2019 (30 days prior to the start of the 2019 NYS Protected Streams Work Window of June 15, 2019).**
- b. Any fill left in place above the pipe must be the minimum amount necessary to protect the pipe.