

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of
The People of the State
of New York v. Raymond Tannatta
and Brian Gain and Violations of
Article 9 of the Environmental
Conservation Law of the
State of New York

ORDER ON CONSENT
File No. R4-2009-0205-11

- by -

Brian R. Gain
Raymond A. Tannatta

Respondents

WHEREAS:

1. The Department of Environmental Conservation (Department) is the state agency charged with the power, duty, and authority to exercise care, custody and control of State Forest Lands pursuant to Article 9 of the Environmental Conservation Law (ECL).
2. Respondents, Brian R. Gain, of 822 Middle Street, Niskayuna, New York and Raymond Tannatta of 832 Middle Street, Niskayuna, New York own residences bordering state land contiguous to the Mohawk River (“residence”).
3. On or about March 15, 2008 and March 22, 2008, Respondents caused the cutting of 435 trees of one inch in diameter or greater on state land along the Mohawk River near their residences without the consent of the State of New York (“site”).
4. ECL § 9-1501 prohibits the cutting of trees on the land of another without consent of the owner.
5. Respondents violated ECL § 9-1501 by cutting trees on state land on or about March 15, 2008 and March 22, 2008 as described in Paragraph 3.
6. On February 13, 2009, Respondent, Raymond A. Tannatta, pled guilty in Schenectady County Court to an A-Misdemeanor, Criminal Mischief in the 4th Degree, which included a conditional discharge requiring his compliance with the terms of this Order on Consent.
7. On February 13, 2009, Respondent, Brian R. Gain, pled guilty in Schenectady County Court to an E-Felony, Criminal Mischief in the 3rd degree, which included a conditional discharge requiring his compliance with the terms of this Order on Consent.

8. Respondents have affirmatively waived their right to notice and hearing in the manner provided by law, and have 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. Settlement

Upon completion of all obligations created in this Order, this Order settles all claims for civil and administrative penalties, and damages, concerning the Respondents' violations described in Paragraphs 3-6 of this Order.

II. Compliance With Order on Consent

Respondents individually and jointly are responsible for compliance with the requirements in this Order and the Schedule of Compliance.

III. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. Binding Effect

This Order is binding upon the Respondents, their agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. Modifications

No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Natural Resource Supervisor in accordance with Paragraph VIII.

VI. Access

For the purpose of insuring compliance with this Order and all other state laws and regulations, duly authorized representatives and agents of the State of New York, the Department, the New York State Thruway Authority, and the New York State Canal Corporation shall be permitted access to the Respondents' properties in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondents' compliance herewith.

VII. Indemnification

Respondents shall indemnify and hold the Department, the New York State Thruway Authority, the New York State Canal Corporation, and the State of New York, and their representatives and employees harmless 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 Respondents, its officials, employees, servants, agents, successors or assigns.

VIII. Submittal

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

B. The Department shall review each of the submittals Respondents make 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 Respondents 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 Respondents shall implement them in accordance with their respective schedules and terms, as approved.

C. (1) If the Department disapproves a submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondents shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal, the Department shall notify Respondents 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 Respondents accept such modifications as may be specified by Department to make it approvable. If Respondents do not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondents 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.

IX. Communications

All communications required herein to the Department shall be sent to:

DEC Region 4
Attn: Regional Natural Resources Supervisor
1130 North Westcott Road
Schenectady, NY 12306

X. Effective Date

The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

XI. Termination of Order

This Order shall terminate upon Respondents' compliance with this Order and the Schedule of Compliance including the final vegetative and bank stabilization requirements. Compliance with this Order will be solely determined by the Department.

DATED: February , 2009
Rotterdam, New York

Alexander P. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region IV

CONSENT BY RESPONDENT
Brian R. Gain

Respondent hereby consents to the issuing and entering of this Order, waives his right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: _____

TITLE: _____

DATE: _____

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

On the ___ day of February in the year 2009 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 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.

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

CONSENT BY RESPONDENT
Raymond A. Tannatta

Respondent hereby consents to the issuing and entering of this Order, waives his right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: _____

TITLE: _____

DATE: _____

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

On the ___ day of February in the year 2009 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 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.

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

SCHEDULE OF COMPLIANCE

1. Within 45 days of the effective date of this Order, Respondents shall submit to the Department for review and approval, an erosion and sediment control plan that addresses all phases of restoration of the site. Such plan shall include erosion & sediment controls specified in the NYS Standards and Specifications for Erosion and Sediment Controls and include provisions for routine inspection by a qualified inspector. Where inspections note deficiencies or the plan is ineffective in controlling erosion and/or sedimentation, the qualified inspector shall direct changes which must be implemented within 48 hours of their observation. Inspection reports shall be submitted electronically to the Department (jbmccull@gw.dec.state.ny.us) within 24 hours of their completion.¹
2. Within 30 days of the Department approval of the erosion and sediment control plan, Respondents shall complete their implementation and provide a certification by a qualified inspector that the Department approved erosion and sediment control plan has been fully implemented.
3. Within 90 days of the effective date of this Order, Respondents shall remove all downed trees, and tree debris from the site and properly dispose of the debris at a Department permitted composting facility.
4. Within 45 days of the effective date of this Order, Respondents shall submit a site tree planting restoration plan to the Department for review and approval that is developed in coordination with the erosion and sediment control plan and that provides for the planting of at least 1200 seedlings similar to kind that were cut down and/or removed by Respondents from the site.
5. Within 45 days of the Department approval of the site tree planting restoration plan, Respondents shall complete its implementation and provide a certification by a qualified inspector that the Department's site tree planting restoration plan has been fully implemented. The tree planting shall be coordinated with the ongoing and final stabilization of the site.

¹All reference to "day(s)" in the Schedule of Compliance shall mean calendar days.