

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of  
the Environmental Conservation Law  
("ECL") Article 24 and Title 6  
of the Official Compilation of Codes,  
Rules and Regulations of the State of  
New York ("6 NYCRR"),

**ORDER ON CONSENT**

- by -

File No. R4-2008-1022-148

Lily Smith

Respondent

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**WHEREAS:**

1. The Department has jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.
2. Respondent, Lily Smith, owns property in and adjacent to Freshwater Wetland EC - 105 ("wetland") at 34 Howes Road in the Town of Chatham, Columbia County ("site").
3. Respondent is a "person" as defined in 6 NYCRR 663.2(w).
4. On September 12, 2008 Department staff met Respondent at the site to delineate the wetland. Department staff flagged the wetland boundary and again told Respondent that a permit was needed to conduct any work in the wetland and/or the area adjacent to the wetland.
5. On September 27, 2008 Respondent had someone come in with a small tractor and cleared a small path by the culvert on the north side of Howes Road. The tractor tires were then used to create ruts in front of the culvert, thus diverting the water from entering the culvert and channeling it alongside of the road towards a lower culvert across from Respondent's house. Water began to flow across the road and the Town of Chatham Highway Department was called in to correct the situation. The work was conducted in the wetland and the area adjacent to the wetland. Respondent did not have a permit to conduct the work in the wetland and/or the area adjacent to the wetland.
6. ECL 24-0701 and 6 NYCRR 663.4(d)(17) require that permit be issued for draining or altering the water level of a wetland or the area adjacent to the wetland.

7. Respondent's altering the water level of the wetland and area adjacent to the wetland without a permit is a violation of ECL 24-0701 and 6 NYCRR 663.4(d)(17).

8. ECL 71-2303(1) provides for up to \$3,000 in civil penalties for each violation of any provision of Article 24 and any regulation issued pursuant thereto, and the restoration of the affected freshwater wetland to its condition prior to the violation.

9. Respondent has affirmatively waived her right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) is hereby assessed against the Respondent. 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 certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, her agents, employees, and all persons, firms, corporations acting under or for him.

III. 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.

IV. 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.

V. 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.

VI. 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.

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

VIII. 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, her agents, her servants, her employees, her successors and her 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.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations set forth in this Order.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

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

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4

CONSENT BY RESPONDENT

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

\_\_\_\_\_  
Lily Smith

DATE: May 4, 2009

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

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ 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: