

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0188 9868

February 21, 2019

William L. Mason, Superintendent
Otsego County Highways, Forestry
And Parks Department
20 Linden Avenue
Cooperstown, NY 13326

Re: Order on Consent
R4-2018-1107-212

Dear Mr. Mason:

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,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: 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,

ORDER ON CONSENT

-by-

R4-2018-1107-212

County of Otsego
197 Main Street
Cooperstown, NY 13326,

Respondent.

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"). More specifically, 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, County of Otsego, is a county of the State of New York.
3. Respondent is a person as defined at ECL § 15-2703(8).
4. Respondent was issued a permit by the Department (Permit ID# 4-3638-00161/00001) ("Permit"), effective August 18, 2018, to conduct culvert maintenance work, pursuant to certain limits and conditions, within the bed and banks of Cherry Valley Creek, a trout fishing stream (identified as "SR-195" by the Department and classified as "C(T)" pursuant to regulations at 6 NYCRR Part 701), where that stream passes through a culvert at Norton Cross Road near the town of Middlefield, New York.

VIOLATION

5. On October 18, 2018, Department staff conducted a compliance inspection of permit-authorized work that Respondent performed at Norton Cross Road where it crosses Cherry Valley Creek.

6. During the October 18, 2018 inspection, Department staff observed that the work limits authorized by the Permit had been exceeded. Specifically, Department staff observed that Respondent:

- Caused unauthorized stream bank disturbances downstream of the permitted culvert maintenance on both the northwest and southeast banks;
- Cleared vegetation from the northwest streambank for approximately 84 linear feet extending downstream from the culvert outlet;¹
- Disturbed and destabilized the southeast stream bank for approximately 40-50 linear feet extending downstream from the culvert outlet; and
- Applied an unauthorized and substandard concrete overlay to the bank in an attempt (presumably) to stabilize the bank.

7. ECL § 15-0501(1) states, 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 issued pursuant to subdivision 3 of this section.”

8. 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.”

9. Respondent’s unpermitted activity in the stream bed and banks of Cherry Valley Creek violated ECL § 15-0501(1) and 6 NYCRR § 608.2(a).

Civil Penalty

10. ECL § 71-1127(1) provides that: “Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 . . . or who violates 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

11. 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 ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500). The civil penalty shall be paid by bank check or company check made payable to the NYS Department of Environmental

¹ Department staff acknowledge that Respondent has subsequently graded and seeded the disturbance to the northwest bank, and that therefore no further remediation activity is required for this portion of the stream bank (see Schedule of Compliance below).

Conservation, which shall be sent along with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check to:

Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany NY 12233-4900

The executed Order on Consent (along with any applicable submissions) shall be sent to:

Department of Environmental Conservation
Region 4, Office of General Counsel
Attn: Stephen Repsher
1130 North Westcott Road
Schenectady, NY 12306

Alternatively, payment may be made electronically. Further information on electronic payment is located at: <http://www.dec.ny.gov/about/61016.html#On-Line>

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including all applicable items in the attached Schedule of Compliance. Any records submitted to the Department shall include the owner's name, facility name and address, contact name, and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

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 Respondent.

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 the 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. Respondent's rights 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 submittal 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.

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 reasonably 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.** All communications required herein shall be made to:

For the Department:

New York State Dept. of Environmental Conservation
Region 4
1130 North Westcott Road,
Schenectady, NY 12306
ATTN: Natural Resources Supervisor

For the Respondent:

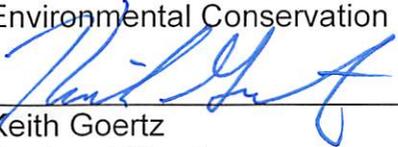
Otsego County Highways, Forestry and Parks Department
ATTN: William L. Mason, Superintendent
20 Linden Avenue
Cooperstown, NY 13326

XIII. **Termination.** The Order shall terminate upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: February 21, 2019
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director

SCHEDULE OF COMPLIANCE

Special Conditions

1. Respondent shall cease all disturbance activity within the protected stream jurisdiction, except as specifically provided for in this Schedule of Compliance.
2. Respondent shall install, and maintain, silt fencing along any areas of disturbance to prevent turbid water from entering the stream until the area is adequately revegetated. Respondent shall remove all silt fencing once the area attains at least 80% vegetative cover.
3. Equipment operation in the active stream channel is prohibited.
4. Respondent shall discharge no sediment or turbid waters to wetlands or waterbodies. For any stream work, the water below the work area shall remain as clear as the water flowing above the work site.
5. For any stream work, Respondent shall divert the stream flow to isolate the work area by: a) piling sandbags; b) constructing a berm; c) building a temporary channel; d) installing a temporary pipe; or e) pumping.
6. Respondent shall restrict any disturbance of the stream bed and banks to the minimum amount necessary to complete the project. Upon completion of the project, Respondent shall shape, seed, and mulch any soil exposed by the work.
7. Respondent shall not commence any work until the Department approves Respondent's work plan (*see below*).

Required Work

1. **By April 1, 2019**, Respondent shall submit, for Department approval, a work plan to stabilize the southeast stream bank, per the following:
 - a. Respondent shall remove all concrete and wood material that has been added to the southeast bank extending downstream from the culvert, and shall stabilize the bank per the method specified by the Department-approved work plan.
 - b. Appropriate methods for stabilization of the southeast bank may include the installation of 'rip-rap,' stacked stone, and/or grading and seeding.
 - c. No further work is required on the impacted portions of the northwest bank of the stream (*see attached map*).

Notes:

- **All work shall be completed within the 2019 Allowable Work Windows for NYS Protected Trout Streams (June 15 to September 30, 2019);**
- Compliance with the terms and conditions of this Schedule of Compliance shall not be a defense to subsequent violations.