

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law (“ECL”) Article 24  
and Part 663 of Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
(“6 NYCRR”)

**ORDER ON CONSENT**  
File No. R4-2008-0616-88

- by -

Manuel and Regina Pinho  
1547 Route 9, Apt A5  
Tivoli, NY 12583

Respondents

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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. Respondents, Manuel and Regina Pinho, own property in and within 100 feet of a freshwater wetland (CL-19) located near State Route 9, Clermont, NY (“the wetland”).
3. On July 7, 2007, Department staff inspected the site and observed that approximately 0.18 acres of fill had been placed in the adjacent area of the wetland for the purpose of constructing a septic system.
4. Regulations at ECL § 24-0701 (2) and 6 NYCRR 663.4 (d) (20) require that a permit be issued to fill in a protected wetland or an adjacent area to a protected wetland.
5. Respondents’ placement of fill adjacent to the wetland without a permit is a violation of ECL § 24-0701 (2) and 6 NYCRR 663.4 (d) (20).
6. On July 7, 2007, Department staff observed a concrete foundation and driveway which had been constructed partly within the wetland adjacent area.
7. Regulations at 6 NYCRR 663.4 (42) provide that no person shall construct a residence or related structures or facilities in a wetland or its adjacent area without a permit from DEC.
8. Respondents violated regulations at 6 NYCRR 663.4 (42) by constructing a concrete foundation and driveway in the wetland adjacent area without a permit from DEC.

9. ECL § 71-2303 (1) provides for up to \$3,000 in civil penalties for each violation of a regulation and the restoration of the affected freshwater wetland to its condition prior to the violation.

10. 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. Respondents admit to the violations set forth herein.

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

I. With respect to the violations identified in this Order, Respondents are hereby assessed a civil penalty of TWO THOUSAND ONE HUNDRED DOLLARS (\$2,100) which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

Payment of the above penalties shall not in any way alter Respondents' obligation to complete performance under the terms of this Order.

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

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. Respondents 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 Respondents, their 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. Respondents 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 Respondents' compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:  
Regional Supervisor of Natural Resources  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

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 Respondents 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 Respondents, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondents and/or any of Respondents' employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondents' 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 Respondents waive 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 Respondents.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondents shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondents, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondents in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII.. 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.

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order .

DATED: , 2009  
Rotterdam, New York

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

BY:

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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 .

\_\_\_\_\_  
Manuel Pinho

DATE : \_\_\_\_\_

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_, before me, the undersigned, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public, State of New York



## SCHEDULE OF COMPLIANCE

1. By July 31, 2008, Respondents shall remove all dirt fill placed in the adjacent area on the north side of the driveway. Once the fill is removed, Respondents shall seed and mulch the area and allow it to revert to natural vegetation. This area north of the existing driveway shall not be mowed or otherwise disturbed.
2. By July 31, 2008, Respondents shall remove all piles of stone and other debris that has been deposited in the adjacent area.
3. By July 31, 2008, Respondents shall submit a plan for development of a residence with the septic system entirely outside of the 100 foot adjacent area and with portions of the area behind the existing concrete foundation restored to a naturally vegetated functional buffer.
4. Prior to further site development that may be allowed under a new wetland permit, Respondents shall restore portions of Wetland CL-19 by removing the existing driveway through Wetland CL-19 on this property and the two adjacent properties.
5. By June 30, 2009, in the event that no plan is submitted for development of a residence on the site, Respondents shall remove portions of the existing concrete foundation and portions of the driveway within the adjacent area and allow the entire adjacent area to revert to natural vegetation and remain unmowed.