

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law Article 17

- by -

**ORDER ON CONSENT**  
File No. R4-2006-0213-16

Taconic Shores Property Owners Association, Inc.  
P.O. Box 25  
Copake, New York 12516

Respondent

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WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“the Department”) is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State, pursuant to §3-0301 of the Environmental Conservation Law (“ECL”), Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (“NYCRR”) and Orders issued thereunder.
2. The Department has jurisdiction over the abatement and prevention of pollution of waters of the state pursuant to Article 17 of the ECL and Title 6 NYCRR Part 750. This jurisdiction authorizes the Department to regulate the discharge of pollutants from point sources into the waters of the State in conformity with the federal Clean Water Act, 33 U.S.C. Section 1251, et seq. The Department also has administrative jurisdiction to protect fresh water wetlands pursuant to ECL Article 24.

Respondent

3. Respondent, Taconic Shores Property Owners Association, Inc., maintains Robinson Pond at County Route &A, Lake View Road in Copake, New York.
4. Respondent was issued freshwater wetlands permit #4-1032-00003, effective from September 9, 2008 to June 30, 2010 which authorizes Respondent to draw down the surface elevation of Robinson Pond ("pond") (Freshwater Wetland CO-3) a maximum of 24 inches below the spillway ("permit") to control weed growth. The permit was not issued as a flood control permit. The pond discharges directly into the Roeliff Jansen Kill, a trout spawning stream with a C(ts) stream classification ("stream").

### Violations of Permit Conditions

5. The permit only authorizes Respondent to draw down the pond to twenty four inches below the spillway, not exceed more than one foot drawn down in a 24 hour period, not commence a drawn after October 31, 2009, not cause a turbid discharge, and not cause a visible contrast in the stream.
6. On February 11, 2009, Department staff determined that the Respondent violated the permit by causing the pond to be: drawn down below 24 inches; the amount of draw down in a 24 hour period to exceed one foot; the draw down to occur after October 31, 2009; the turbid discharge of water; and a visible contrast in the stream.

### Waiver of Hearing

7. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has 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. Respondent is hereby assessed a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) for the violations stated herein. TWO THOUSAND FIVE HUNDRED THOUSAND DOLLARS (\$2,500) of the civil penalty is payable with the return of the signed and notarized Order. Payment shall be made by bank or certified check or money order made out to the Department of Environmental Conservation. TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) of the civil penalty is suspended conditioned on Respondent's compliance with its permit. Payment of the suspended civil penalty shall be due within seven business days of receipt of a written notice from the Department setting forth nature of the violations.
- II. 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.
- III. The provisions of this Order shall be deemed to bind Respondent, their officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it.
- IV. Respondent shall comply with its permit.
- V. If, for any reason, Respondent desires that any provisions of this Order be changed, Respondent shall make timely written application to the Department's Region 4 Regional Director setting forth reasonable grounds for the relief sought. No change or modification of this Order shall be made or be effective except as may be specifically set forth in writing by the Department.
- VI. All reports and submissions herein required herein shall be sent to the Region 4, New York. State Department of Environmental Conservation, 1130 North Westcott Road, Schenectady, New York, 12306, Att: Regional Enforcement Coordinator.

Communications with the Respondent shall be sent to: Brian Herman, Esq., 541 Warren Street, Hudson, New York 12534

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

VIII. For the purpose of insuring compliance with this Order the permit and the ECL and regulations promulgated thereunder, duly authorized representatives and agents of this Department shall be permitted access to the pond area in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order, the permit, ECL and regulations promulgated thereunder.

IX. The terms of this Order shall not be construed to prohibit the Commissioner of his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

X. Respondent shall indemnify and hold the Department, 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 Respondent, their directors, officers, employees, servants, agents, successors or assigns.

XI. 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.

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, their officers, directors, agents, servants, employees, successors and assigns; and

C. 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 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 on Consent and whether or not this Order on Consent has been entered into voluntarily by Respondent.

XII. This Order on Consent shall terminate one year from the effective date of this Order.

DATED: April , 2009  
Rotterdam, NY

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 issuance and entry of the foregoing Order, waives its rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: \_\_\_\_\_

Shawn McClain

Title: President

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

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

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me who, being duly sworn, did depose and say that he/she/they reside at \_\_\_\_\_ and that he is the \_\_\_\_\_, the corporation described in and which executed the above instrument; that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

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