

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Alleged Violations of Article 17 of the Environmental Conservation Law of the State of New York (ECL), and Parts 703 and 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**ORDER**

DEC Case No.  
R4-2009-0724-117

- by -

**Charles H. Buckley,**

Respondent.

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**Introduction and Procedural Background**

This matter involves the administrative enforcement of alleged violations of the New York Environmental Conservation Law (ECL) and accompanying regulations for undertaking the construction of a golf course without first obtaining a State Pollutant Discharge Elimination System (SPDES) general permit for stormwater discharges from construction activity and then violating the SPDES general permit after it was obtained.

Staff from the Department's Region 4 Office, Schenectady, New York (Department staff), served a notice of hearing and amended complaint dated May 13, 2010, upon Charles H. Buckley. According to the amended complaint, Mr. Buckley owns 114 acres of real property in the Town of Hancock, Delaware County (the site), adjacent to the Hancock Golf Course, which is a municipal golf course in the Town of Hancock.<sup>1</sup>

The amended complaint contains five causes of action, alleging that

- on May 29, 2009, respondent violated the water quality standard for turbidity in contravention of ECL 17-0501 and

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<sup>1</sup>Mr. Buckley and his wife, Alice Buckley, manage the Hancock Golf Course. That golf course is adjacent to the property that is the subject of this enforcement matter, which Mr. Buckley owns and also intends to develop as a golf course and upscale building lots. Tr, at 77-78.

6 NYCRR 703.2 by hiring a contractor who used heavy equipment to cut down trees and pull them over a temporary water crossing, which discharged sediment to an unnamed tributary (Tributary D-70-1), which flows into Busfield Pond (P270), which flows into Sands Creek (Tributary D-71-1), which flows into the West Branch of the Delaware River, causing a substantial visible contrast to the water of the tributary and the pond;

- on May 29, 2009, respondent violated 6 NYCRR 750-1.4 by commencing construction activity through clearing and disturbance of more than one acre of the site without a SPDES General Permit for Stormwater Discharges from Construction Activity;

- on July 10, 2009, respondent violated 6 NYCRR 750-1.4 by continuing construction activity through clearing and disturbance of more than one acre of the site without a SPDES General Permit for Stormwater Discharges from Construction Activity;

- on October 30, 2009, respondent failed to implement erosion and sediment controls as he was required to do pursuant to SPDES General Permit for Stormwater Discharges from Construction Activity, Part IV.B.1; and

- on October 30, 2009, respondent failed to maintain erosion and sediment controls as he was required to do pursuant to SPDES General Permit for Stormwater Discharges from Construction Activity, Part IV.A.1.

For these alleged violations, Department staff requests an order from the Commissioner that

- assesses a total civil penalty of \$100,000;

- revokes respondent's SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-08-001);

- directs respondent to develop an erosion and sediment control plan, and a stormwater pollution prevention plan before undertaking any additional construction activity at the site; and

- directs respondent to remove a temporary stream crossing structure.

The adjudicatory enforcement hearing was held on September 30, 2010, at the Department's Region 4 Offices in Schenectady, New York. Richard Ostrov, Esq., Regional Attorney, represented Department staff. Robert G. Davis, Esq. (Hancock, New York) represented respondent. The hearing record closed upon receipt of the transcript by the Office of Hearings and Mediation Services on October 8, 2010. Administrative Law Judge (ALJ) Daniel P. O'Connell prepared the attached hearing report, which I adopt as my decision in this matter, as modified below.

The purpose of the hearing was to develop a record to determine the appropriate civil penalty for the five violations in the amended complaint. The hearing was not held to determine whether respondent committed the violations because respondent signed a stipulation in which he admitted that he did in fact commit them. (See Exh 5, Stipulation of Admission to Violations in Amended Complaint, executed September 27, 2010, in which respondent admits the facts and violations alleged in the five causes of action asserted in the amended complaint.)<sup>2</sup> By signing the stipulation, respondent also agreed to implement the remediation outlined in the amended complaint.

### **SPDES General Permit for Stormwater Discharges from Construction Activity**

Construction activity on one or more acres of land cannot commence until a property owner obtains a SPDES general permit for stormwater discharges. 6 NYCRR 750-1.4; 750-1.21(b)(2); SPDES General Permit for Stormwater Discharges from Construction Activity, at I.A.1. Unregulated construction activity can cause pollutants to enter surface waters through stormwater events. In particular, without appropriate controls, sediment from construction activity can cloud surface waters (create turbidity) and affect the habitat of aquatic and other species. The SPDES general permit is intended to avoid these adverse impacts.

The Department issues the permit in the form of a "general permit," which is a more streamlined way of regulating stormwater discharges from construction activity.<sup>3</sup> To obtain

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<sup>2</sup> Pursuant to the terms of the stipulation, respondent waived his right to a hearing concerning his liability for the violations charged in the amended complaint, but he reserved his right to a hearing with respect to the civil penalty. Exh 5, at 1.

<sup>3</sup> The permit is officially called the "SPDES General Permit for

coverage under the general permit, an applicant files a "Notice of Intent" (NOI) in which the applicant provides information about the site and the construction activity. The applicant certifies that the information is accurate, expressly acknowledges the penalties for providing false information (payment of a fine or imprisonment), and acknowledges that a stormwater pollution prevention plan (SWPPP) has been developed and will be implemented at the site. See Amended Complaint, Exh D, at 10. Moreover, the person who prepares the SWPPP is required to certify in the NOI that SWPPP was in fact prepared. Id., at 6.

### **Assessment of the Civil Penalty**

In the amended complaint, Department staff seeks a \$100,000 civil penalty for all of the violations. At the hearing, which went forward only as to the civil penalty, staff provided the bases for the civil penalty calculation, applying the criteria and methodology of the Department's Civil Penalty Policy ("DEE-1," Exh 12) and the Division of Water's Technical and Operational Guidance Series (TOGS) 1.4.2, entitled "Compliance and Enforcement of SPDES Permits" (Exh 13).

In brief, when arriving at an appropriate civil penalty, staff calculates the economic benefit to the violator and the gravity of the harm to the environment. That subtotal is then adjusted based on a number of factors: the violator's culpability, cooperation, history of noncompliance, ability to pay, and any unique factors. The final calculation takes into account all of these factors. Two of these factors are at issue here: culpability and ability to pay.

#### Culpability

The facts surrounding respondent's culpability in this matter are not complicated.<sup>4</sup> Staff first visited respondent's site on May 29, 2009, and observed that respondent had commenced

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Stormwater Discharges from Construction Activity, Permit No. GP-0-08-001." See Amended Complaint, Exh A. This permit was slated to expire in April 2010, but was updated and replaced a few months earlier than that, in January 2010. The new number for the general permit for stormwater discharges from construction activity is GP-0-10-001.

<sup>4</sup> This discussion of the facts of respondent's culpability is not to determine respondent's liability for the violations - respondent admitted liability by signing the stipulation - but to determine the amount of the civil penalty pursuant to Department policy.

construction activity without the necessary SPDES general permit for stormwater discharges from construction activity. Staff followed up that visit by sending a notice of violation to respondent, which listed the violations that staff saw and informed respondent that he needed to obtain the SPDES permit.

Staff next visited the site on July 10, 2009. On additional areas of the site that staff did not have access to on the previous site visit, staff observed that respondent was undertaking construction activity without the requisite SPDES general permit for stormwater discharges.

Respondent did not apply for the necessary SPDES general permit until he filed an NOI on August 26, 2009. Amended Complaint, Exh D. This was after staff twice visited his site and observed violations of undertaking construction activity without the SPDES general permit for stormwater discharges from construction activity. The proposed construction activity stated in the NOI was the development of a golf course. In the NOI, respondent certified that the information he provided was accurate and he acknowledged the penalties for providing false information. Id. at 10. Respondent also stated that a SWPPP was prepared by Richard Bassler, who respondent represented was a professional engineer. Id. at 6. Moreover, in the NOI, Mr. Bassler certified that he prepared the SWPPP. Id.

Department staff notified respondent by letter dated September 11, 2009, that it had received the NOI and that effective September 5, 2009, respondent's construction activity would be covered under the SPDES general permit for stormwater discharges from construction activity, with a few conditions, including that (1) the information in the NOI was accurate and complete, (2) an acceptable SWPPP has been developed, and (3) the activity would comply with the general permit. See Amended Complaint, Exh E.

Respondent violated these conditions. In the NOI, he certified that a SWPPP was prepared, but failed to produce the SWPPP when ordered to by the ALJ. See Order to Compel Disclosure, dated August 17, 2010. Then he testified at the hearing that he did not know whether he received the SWPPP. Tr, at 94, 96. The only conclusion that I can draw from this is that no SWPPP was in fact prepared, which also means that the information presented in the NOI was not accurate.

Moreover, Department staff next visited the site on October 30, 2009, and observed further violations based on a failure to

implement and maintain erosion and sediment controls. This time, these were violations of the general permit.

In sum, not only did respondent undertake construction activity without a permit, he submitted a document to obtain a permit that contained false information, and then violated the permit once it was issued to him. By signing the stipulation, respondent admitted that he committed the five violations alleged in the amended complaint.

#### Ability to Pay

Respondent claims that he has no ability to pay a civil penalty. The burden to demonstrate this factor is on the respondent. Civil Penalty Policy, Exh 12, at 16. Respondent relies on the following facts to demonstrate his inability to pay a civil penalty:

- respondent is 77 years old (Tr, at 74) and has very limited personal income or liquid assets;
- respondent and his wife live in a mobile home adjacent to the 9-hole Hancock Golf Course, which they have managed for over 40 years (Tr, at 74, 78-79);
- respondent and his wife have secured various personal loans from family members, friends, and other acquaintances to help them with their expenses (Exh 9, at 10, 12);
- respondent and his wife own a townhome in Key Largo, Florida, which (1) they purchased in 1991 for \$75,000; (2) they refinanced in 2008 for \$289,000; (3) has a present estimated market value of \$180,000; and (4) is in foreclosure (Tr, at 80; Exh 9, at 8; Exh 15); and
- respondent purchased the 114-acre parcel adjacent to the existing 9-hole Hancock Golf Course, which is the subject of this enforcement proceeding, and financed the \$142,000 purchase price through a friend, William Mullen (Tr, at 76-77; Exh 16).

I can appreciate that respondent is a person of limited means and is presently experiencing some difficult financial circumstances. Two aspects of respondent's financial situation, however, work against his claim of an inability to pay. First, he refinanced his Florida townhome in 2008 for \$289,000, which is an amount that far exceeds the original purchase price of

\$75,000. Yet, respondent has presented no information about the amount of the net proceeds of the refinance or what happened to those proceeds.

Second, respondent alone retains title to the 114-acre parcel adjacent to the Hancock Golf Course. Although the complete terms of the agreement with William Mullen, who provided the financing for the \$142,000 purchase price, are not in the record, respondent testified that beyond Mr. Mullen's initial investment and interest, Mr. Mullen was to benefit from the agreement in two additional ways: (1) he would have his choice of any one lot out of the 19 "upscale building lots" overlooking the golf course and (2) he would have a percentage (25% or 30%, respondent could not recall the exact percentage) of the sale of any of the other lots. Tr, at 77-78. Thus, the 114-acre parcel, if developed properly, could result in a financial benefit for respondent, after Mr. Mullen exercised his share.<sup>5</sup>

I am also troubled by respondent's actions. His townhome in Florida is in foreclosure, yet he is pursuing the golf course and lot development in Hancock, New York. He had a written contract (which he did not produce) with the contractor who cleared part of the parcel for some of the fairways, and whose activities led to the violations at issue in this proceeding, but felt that he was not paid enough for the trees that were cut. Tr, at 89. He hired a professional engineer who he knew in the community and had no written contract with him. Tr at 91. He certified in the NOI that a SWPPP was prepared and that the information in the NOI was accurate. Amended Complaint, Exh D, at 10. Yet, respondent failed to produce the SWPPP in this proceeding. Tr, at 96.

Based on the totality of the record, I am not persuaded by respondent's claim of a complete inability to pay a civil penalty, or that his claimed inability to pay outweighs his culpable actions. Staff has made a reasonable request for a civil penalty of \$100,000. Based on the record, including the financial information submitted by respondent, I am imposing a civil penalty of \$50,000, \$7,500 of which shall be payable and the balance of \$42,500 suspended pending successful completion of the remediation requested by staff. The penalty that I am

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<sup>5</sup> I recognize that the record does not include information about a listing price for the lots and that the real estate market is currently in the midst of a downturn. Nonetheless, the 114-acre parcel has value.

imposing also takes into account the fact that respondent is required to remediate the violations at the site.

**NOW, THEREFORE,** having considered this matter and being duly advised, it is hereby **ORDERED** that

- I. Respondent Charles H. Buckley is adjudged to have violated
  - A. the narrative water quality standard for turbidity set forth in 6 NYCRR 703.2 on May 29, 2009, when respondent released large amounts of mud and sediment into Tributary D-70-1 (which is an unnamed tributary that flows into Busfield Pond and then into Sands Creek;
  - B. 6 NYCRR 750-1.4 on May 29, 2009, when respondent commenced construction activity on more than one acre at the site without a SPDES general permit for stormwater discharges from construction activity;
  - C. 6 NYCRR 750-1.4 on July 10, 2009, when respondent continued construction activity at the site without a SPDES general permit for stormwater discharges from construction activity;
  - D. the terms and conditions of the SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-08-001) on October 30, 2009, when respondent failed to install erosion and sediment controls consistent with the standards and specifications for erosion and sediment controls referenced in Part IV.B.1 of the permit; and
  - E. the terms and conditions of the SPDES General Permit for Stormwater Discharges from Construction Activity on October 30, 2009, when respondent failed to maintain erosion and sediment controls consistent with the standards and specifications for erosion and sediment controls referenced in Part IV.A.1 of the permit.

II. Pursuant to the terms of the Stipulation of Admission to Violations in Amended Complaint, executed September 27, 2010, respondent's authorization to undertake construction activity at the site under the terms and conditions of the SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-08-001) is revoked.

III. Immediately upon service of this order on respondent, respondent shall retain a qualified professional to develop and oversee implementation of an erosion and sediment control plan for areas already disturbed. The plan shall include inspections on a weekly basis by a qualified inspector approved by the Department. The plan shall be submitted to Department staff within thirty (30) days of service of this order upon respondent.

IV. Respondent shall stop all construction activity at the site until he has demonstrated to Department staff that he has met the authorization criteria in Section II.B.2 of SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-10-001, formerly GP-0-08-001), and that he has developed a stormwater pollution prevention plan (SWPPP) that complies with the terms and conditions of the SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-10-001, formerly GP-0-08-001).

V. Respondent shall maintain a copy of the SWPPP with copies of the weekly site inspection reports. Only activities authorized by the stipulation shall be conducted at the site until respondent obtains authorization to discharge under the SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-10-001, formerly GP-0-08-001).

VI. Respondent shall remove the temporary stream crossing in a manner that avoids the discharge of turbid waters to the stream. The banks of the stream shall be seeded and mulched to minimize any erosion. Respondent shall notify Department staff within 24 hours prior to commencing the removal of the temporary crossing. Any future stream crossing shall be constructed in accordance with New York State Standards and Specifications for Temporary Access Waterway Crossing, at 5A.79-86, which is a part of New York State Standards and Specifications for Erosion and Sediment Control, referenced in SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-10-001, formerly GP-0-08-001), at IV.A.1.

VII. Respondent Charles H. Buckley is assessed a civil penalty in the amount of fifty thousand dollars (\$50,000), of which forty-two thousand five hundred dollars (\$42,500) is suspended contingent upon compliance with the remedial measures set forth in paragraphs III, IV, V, and VI of this order. The non-suspended civil penalty portion, seven thousand five hundred dollars (\$7,500) shall be due and payable within 60 days of the date of service of this order. Payment shall be made in the

form of a cashier's check, certified check, or money order made payable to the order of the "New York State Department of Environmental Conservation" and shall be delivered by certified mail, overnight delivery, or hand delivery to the Department of Environmental Conservation at the address in paragraph VIII below. Failure (1) to submit the payable penalty by the due date or (2) comply with the terms of paragraphs III, IV, V, and VI of this order shall result in the imposition of the full \$50,000 penalty.

VIII. All communications from respondent to the Department concerning this order shall be made to:

Richard Ostrov, Esq.  
Regional Attorney  
NYS Department of  
Environmental Conservation  
Region 4  
1130 North Westcott Road  
Schenectady, New York 12306

IX. The provisions, terms, and conditions of this order shall bind respondent Charles H. Buckley and his heirs, successors, and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By:

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Peter M. Iwanowicz  
Acting Commissioner

Dated: November 29, 2010  
Albany, New York

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 BROADWAY  
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

Alleged Violations of Article 17 of the Environmental  
Conservation Law of the State of New York (ECL), and Parts 703  
and 750 of Title 6 of the Official Compilation of Codes, Rules  
and Regulations of the State of New York (6 NYCRR)

- by -

Charles H. Buckley  
Respondent.

DEC Case No. R4-2009-0724-117

Hearing Report

by

/s/

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Daniel P. O'Connell  
Administrative Law Judge

## Proceedings

Staff from the Department's Region 4 Office, Schenectady, New York (Department staff) duly served a notice of hearing and amended complaint dated May 13, 2010, with Attachments A through M, (collectively, Exhibit 1) upon Charles H. Buckley. According to the May 13, 2010 amended complaint, Mr. Buckley owns real property in the Town of Hancock, Delaware County, adjacent to the Town of Hancock Golf Course (the site). Mr. Buckley's parcel is identified as No. 429-1-5.11 (Exhibit 16).

The amended complaint contends further that on August 26, 2009, Mr. Buckley filed a notice of intent (NOI [Exhibit 1, Attachment D]) with Department staff for a State Pollutant Discharge Elimination System (SPDES) general permit for stormwater discharges from construction activity (GP-0-08-001 [Exhibit 1, Attachment A]). Department staff received the NOI on August 31, 2009. Among the proposed construction activities stated in the NOI is the development of a 9 hole golf course (Exhibit 1, Attachment D at 3 of 10).

Subsequently, Department staff issued an acknowledgement of Mr. Buckley's August 26, 2009 NOI on September 11, 2009. The September 11, 2009 acknowledgement authorized Mr. Buckley to undertake regulated construction activities consistent with the terms of the SPDES general permit (GP-0-08-001). According to the September 11, 2009 acknowledgement, Mr. Buckley's SPDES general permit is identified as NYR-10R637, and became effective on September 8, 2009. (Exhibit 1, Attachment E.)

In five causes of action, the May 13, 2010 amended complaint alleges that Mr. Buckley violated various provisions of Environmental Conservation Law (ECL) article 17; implementing regulations at 6 NYCRR part 703 (Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations) and 6 NYCRR 750 (SPDES Permits); as well as the terms and conditions of the SPDES general permit for stormwater discharges from construction activity.

For these alleged violations, Department staff requests an Order from the Commissioner that would assess a total civil penalty of \$100,000, and revoke the SPDES general permit. In addition, Department staff requests that the Commissioner's

Order direct Mr. Buckley to develop an erosion and sedimentation control plan, and a stormwater pollution prevention plan before undertaking any additional construction activities at the site. Finally, Department staff requests that the Commissioner direct Mr. Buckley to remove a temporary stream crossing structure.

With a cover letter dated June 23, 2010, Mr. Buckley filed an answer dated June 22, 2010 (Exhibit 2). Mr. Buckley denies the violations alleged in the May 13, 2010 amended complaint. Mr. Buckley did not assert any affirmative defenses in the June 22, 2010 answer.

With service of the May 13, 2010 amended complaint, Department staff also included a notice of discovery. In the notice of discovery, Department staff requested copies of various documents, including, but not limited to, a copy of any stormwater pollution prevention plan (SWPPP) and related documents. When Mr. Buckley did not respond to the discovery request, Department staff moved for an order to compel, and filed a motion under cover of letter dated July 7, 2010 (Exhibit 3). Mr. Buckley did not respond to Department staff's motion. The matter was assigned to Administrative Law Judge (ALJ) Daniel P. O'Connell to decide the motion. On August 17, 2010, ALJ O'Connell issued an Order compelling disclosure (Exhibit 4). Mr. Buckley did not comply with the August 17, 2010 Order.

On September 22, 2010, a telephone conference call with the parties' representatives was held to schedule the hearing. As scheduled, the adjudicatory enforcement hearing commenced at 10:00 a.m. on September 30, 2010 at the Department's Region 4 Offices in Schenectady, New York.

Richard Ostrov, Esq., Regional Attorney, represented Department staff. During the hearing, Department staff called Carol Lamb-LaFay, P.E., Environmental Engineer II, to testify about the requested civil penalty. Robert G. Davis, Esq. (Hancock, New York) represented Mr. Buckley. Mr. Buckley testified about his inability to pay the requested civil penalty.

On October 8, 2010, the Office of Hearings and Mediation Services received the stenographic transcript of the hearing held on September 30, 2010. The hearing record closed upon receipt of the transcript.

### **Stipulation**

Exhibit 5 is a copy of the stipulation of admission to violations in amended complaint. Mr. Buckley signed the stipulation on September 24, 2010, and Mr. Ostrov signed the stipulation on September 27, 2010. Mr. Buckley admits the facts and violations alleged in the five causes of action asserted in the May 13, 2010 amended complaint. As outlined in the stipulation, Mr. Buckley waived his right to a hearing concerning liability, but reserved his right to a hearing with respect to the civil penalty. Mr. Buckley agreed to implement the remediation outlined in the May 13, 2010 amended complaint. A copy of the stipulation is attached to this Hearing Report as Appendix A.

### **Findings of Fact**

Findings Nos. 1 through 24, are based on the stipulation.

1. Charles H. Buckley owns real property in the Town of Hancock, Delaware County, identified on the tax map as Parcel No. 429-1-5.11 (the site). Mr. Buckley purchased the property in 2008. The property is adjacent to the Hancock Golf Course. The parcel is about 120 acres. (Also see Exhibit 16.)
2. An unnamed tributary, identified as D-70-1, flows south through the site. Tributary D-70-1 flows to Busfield Pond (P270). Busfield Pond flows south to Sands Creek (Tributary D-71-1) and then into the West Branch of the Delaware River.
3. Tributary D-70-1 and Busfield Pond (P270) are Class C streams, and Sands Creek (Tributary D-71-1) is a Class C(TS), which is a trout spawning stream (see 6 NYCRR 815.6).
4. The Hancock Golf Course maintains a website, which outlines a development plan for the site. The plan includes the development of a nine-hole golf course, as well as 19 building parcels. The size of the building parcels would range from two to five acres.

5. On August 31, 2009, the Department received a notice of intent (NOI) concerning the site signed by Mr. Buckley on August 26, 2009 (Exhibit 1, Attachment D at 10 of 10). Mr. Buckley intended to develop the site as a golf course. The NOI identifies Richard Bassler as the professional engineer who certified that a stormwater pollution prevention plan (SWPPP) had been developed for the construction activities on the site. As of the date of the hearing, neither Mr. Buckley nor his consultant had provided Department staff with a SWPPP.
6. With a letter dated September 11, 2009, Department staff acknowledged receipt of Mr. Buckley's August 26, 2009 NOI, and authorized him to undertake the regulated construction activities consistent with the terms of the SPDES general permit (GP-0-08-001). The effective date of Mr. Buckley's SPDES general permit was September 8, 2009, and it is identified by permit number NYR-10R637. (Exhibit 1, Attachment E.)
7. Department staff visited the site on May 29, 2009, July 10, 2009, and October 30, 2009.

A. First Cause of Action

8. During the May 29, 2009 site visit, Department staff observed that Mr. Buckley's contractor had cut down trees, and was in the process of cutting down additional trees.
9. Department staff also observed Mr. Buckley's contractor using heavy equipment to pull logs across Tributary D-70-1.
10. This activity resulted in the release of large amounts of mud and sediment into Tributary D-70-1.
11. Relative to the stream crossing area, the water in Tributary D-70-1 upstream was clear compared to the water downstream from the crossing. On May 29, 2009, Department staff observed that the water in Tributary D-70-1 downstream from the crossing and in Busfield Pond (P270) was turbid.

B. Second Cause of Action

12. During the May 29, 2009 inspection, Department staff observed that more than one acre of the site had been disturbed. Such a disturbance is a construction activity (see 40 CFR 122.26[b][14][x]).
13. On May 29, 2009, neither Mr. Buckley nor his contractor had a SPDES permit from the Department to manage stormwater discharges from the site during construction activities.
14. With respect to the first and second causes of action, Department staff sent Mr. Buckley a notice of violation (NOV) dated May 29, 2009. The May 29, 2009 NOV stated that Department staff inspected the site on that date and observed violations of ECL 17-0501. The May 29, 2009 NOV advised Mr. Buckley about the SPDES general permit.

C. Third Cause of Action

15. Staff returned to the site on July 10, 2009, and observed additional, disturbed areas.
16. Staff observed disturbed areas adjacent to Tributary D-70-1 where soil had eroded into the tributary.
17. Staff did not observe any controls in place on the site to prevent the erosion of soil from disturbed areas into Tributary D-70-1.
18. On July 10, 2009, neither Mr. Buckley nor his contractor had a SPDES permit from the Department to manage stormwater discharges from the site during construction activities.

D. Fourth Cause of Action

19. After issuing the September 11, 2009 acknowledgement letter, which granted the SPDES general permit

(Exhibit 1, Attachment E), Staff went to the site on October 30, 2009, and observed a temporary crossing of Tributary D-70-1. The temporary crossing did not comply with the standards and specifications for erosion and sediment controls referenced in Part III B.1 of the SPDES General Permit for stormwater discharges.

20. The temporary crossing did not have the required water diverting structures on either side of Tributary D-70-1.
21. The temporary crossing was not constructed using the materials specified in the standards.
22. Staff did not observe any perimeter controls in place on the site to prevent the erosion of soil from disturbed areas into Tributary D-70-1.

E. Fifth Cause of Action

23. During the October 30, 2009 site visit, Department staff inspected the entrance of the construction site adjacent to the public right-of-way, which is Golf Course Road.
24. Staff observed that the equipment exiting the construction site had tracked sediment onto Golf Course Road.

F. Civil Penalty

25. The total estimated economic benefit associated with the demonstrated violations is \$26,000.
26. At minimum, the estimated costs of remediation, as outlined in the stipulation, would be \$26,000.
27. Mr. Buckley's liquid assets are very limited, and his net worth is negative. Mr. Buckley's ability to pay any civil penalty is very low.

## Discussion

As noted above, the stipulation (Exhibit 5) resolves all issues related to Mr. Buckley's liability. The purpose of the hearing was to develop a record to determine the appropriate civil penalty for the five demonstrated violations.

### I. Department Staff's Civil Penalty Calculation

To support its civil penalty request totaling \$100,000, Department staff called Carol Lamb-LaFay, P.E. Ms. Lamb-LaFay is an Engineer II from DEC Region 4, Division of Water. The parties stipulated to Ms. Lamb-LaFay's qualifications as an expert concerning stormwater management (Tr. at 19). During her testimony, Ms. Lamb-LaFay outlined Department staff's rationale for the requested civil penalty. Ms. Lamb-LaFay explained that she relied on the guidance outlined in the Commissioner's *Civil Penalty Policy* (DEE-1), dated June 20, 1990 (Exhibit 12), and Division of Water Technical and Operational Guidance Series (TOGS [1.4.2]) entitled, *Compliance and Enforcement of SPDES Permits*, dated June 24, 2010 (Exhibit 13).

DEE-1 divides the civil penalty calculation into two components. The first concerns the economic benefit. According to DEE-1 (§ IV.C.1), a respondent obtains an economic benefit by avoiding costs related to compliance with statutory and regulatory requirements. DEE-1 recommends (§ IV.C.1) that every effort should be made to calculate and recover the economic benefit of noncompliance.

The second component associated with the civil penalty calculation is the gravity component. Generally, the gravity component considers the potential or actual harm that resulted from the violations, and the significance of the violations to a particular regulatory scheme. (DEE-1 § IV.D.) After the economic benefit and the gravity components are determined, the final civil penalty may be adjusted based on factors such as respondent's culpability, respondent's cooperation to resolve the violations, respondent's history of non-compliance, and respondent's ability to pay a civil penalty, among other things. (DEE-1 § IV.E.)

A. Economic Benefit Component

After considering the following factors, Department staff estimated that Mr. Buckley realized a total economic benefit of \$26,000 (Exhibit 11) by not obtaining a SPDES General Permit from the Department before undertaking construction activities at the site. First, the SPDES general permit requires the development of a SWPPP by a professional (Exhibit 1, Attachment A, § III.A.3 [at 10 of 40], and Attachment D [at 6 of 10]). Ms. Lamb-LaFey estimated that the total cost of preparing the SWPPP would be \$16,000. This estimate is based on 80 hours of work at \$200 per hour by a professional engineer. (Tr. at 39-43; Exhibit 11.)

The second factor that Department staff considered was the inspection costs. The terms and conditions of the SPDES general permit require weekly site inspections by a qualified inspector (Exhibit 1, Attachment A, § IV.C [at 16 of 40]). Ms. Lamb-LaFey estimated that the inspection costs would total \$5,000. (Tr. at 46-48; Exhibit 11.)

The third factor was the cost of implementing and maintaining the erosion and sediment controls prescribed by the SWPPP. Ms. Lamb-LaFey considered labor costs associated with the installation and maintenance of materials; the cost of the materials including hay bales and silt fencing; and an estimate for the length of time that these features would remain installed at the site. Ms. Lamb-LaFey estimated that the total cost of implementing and maintaining the erosion and sediment controls at the site would be \$5,000. (Tr. at 48-50; Exhibit 11.)

Based on her qualifications and experience, Ms. Lamb-LaFey estimated that the economic benefit associated with the demonstrated violations totaled \$26,000 (Exhibit 11). Mr. Buckley stipulated to Ms. Lamb-LaFey's qualifications (Tr. at 19), and offered nothing to challenge the factors that Ms. Lamb-LaFey considered in estimating the economic benefit. Accordingly, I find that Department staff provided a reasoned elaboration for this estimate, and I accept it. Based on the guidance provided in DEE-1 (§ IV.C.1), the Commissioner should assess a minimum civil penalty of \$26,000 in order to recover this economic benefit.

B. Gravity Component

With respect to calculating the gravity component of the civil penalty (DEE-1 § IV.D [Exhibit 12]), TOGS 1.4.2 (Exhibit 13) recommends minimum civil penalties for various violations. For example, the minimum civil penalty associated with the water quality violation asserted in the first cause of action of the May 13, 2009 amended complaint is \$5,000 per violation. The minimum civil penalty associated with the construction activities undertaken at the site without a permit from May 29, 2009 to July 10, 2009 is \$63,000 for each violation asserted in the second and third causes of action. Finally, the minimum civil penalty associated with failing to implement erosion and sediment control measures on the site on October 30, 2009 are \$1,500 for each violation asserted in the fourth and fifth causes of action. (Tr. at 24-29, 32-33, 38; Exhibit 13 [Base Penalty Tables at 42-43].)

TOGS 1.4.2 provides additional guidance concerning the adjustment factors identified in DEE-1. For example, there is a multiplier for the environmental significance of a violation (Exhibit 13 [Appendix C at 47]). Ms. Lamb-LaFey explained that she chose the 1.25 multiplier for the violation asserted in the first cause of action because the narrative water quality standard for turbidity had been violated (Tr. at 29-30; Exhibit 10). With respect to environmental significance associated with the other violations, Department staff chose the 1.0 multiplier, which reflects that the actual or potential environmental impact was minimal (Exhibits 10 and 13 [Appendix C at 47]).

Appendix D (at 48-49) to TOGS 1.4.2 identifies additional penalty adjustment factors considered in DEE-1, and the multipliers associated with these factors. To calculate the requested civil penalty, Department staff considered the following: (1) Mr. Buckley's culpability; (2) his level of cooperation; and (3) his history of noncompliance.

With respect to culpability, Ms. Lamb-LaFey stated that she chose a multiplier of 1.25 for each of the five violations because Department staff did not observe any controls at the site to prevent the erosion of mud and sediment from disturbed areas into Tributary D-70-1 (Tr. at 30-31; Exhibit 10). Concerning Mr. Buckley's level of cooperation, Ms. Lamb-LaFey chose a multiplier of 1.0 for the first violation, and a multiplier of 1.1 for the subsequent four violations (Exhibit

10). After the May 29, 2009 site inspection, Ms. Lamb-LaFey prepared a notice of violation (NOV) (Tr. at 33-34; Exhibit 1, Attachment I), which explained that Mr. Buckley must obtain a SPDES permit to control stormwater runoff from the site during construction activities.

However, when Department staff inspected the site subsequent to the May 29, 2009 NOV, Ms. Lamb-LaFey observed additional violations, which demonstrates that Mr. Buckley's level of cooperation with respect to the subsequent violations was less than the level of cooperation associated with the first (Tr. at 33, 35). Because Mr. Buckley had no previous violations, Ms. Lamb-LaFey chose a multiplier of 1.0 with respect to the history of noncompliance adjustment factor (Tr. at 31).

Ms. Lamb-LaFey recommended that the base penalty should be \$98,563 (Tr. at 51; Exhibit 10). As previously noted, Mr. Buckley stipulated to Ms. Lamb-LaFey's qualifications (Tr. at 19, 38), and offered nothing to challenge Ms. Lamb-LaFey's base penalty calculation. Accordingly, I find that Department staff provided a reasoned elaboration for this estimate, and I accept it. To the base penalty calculation, Department staff added the economic benefit (Exhibit 11) for a total civil penalty of \$124,563. In the May 13, 2009 amended complaint, Department staff rounded down the civil penalty to \$100,000. (Tr. at 51-52.)

## II. Respondent's Ability to Pay

Mr. Buckley contends that he is not able to pay any civil penalty. DEE-1 identifies a respondent's ability to pay as a civil penalty adjustment factor. DEE-1 notes further that the burden to demonstrate an inability to pay rests with the respondent and that a significant amount of financial information would be expected. (DEE-1 § IV.E.4.)

Mr. Buckley testified at the hearing, and explained that under a lease agreement, he and his wife have operated the High Hills Golf Course (doing business as the Hancock Golf Course) on behalf of the Town of Hancock for 40 years (Tr. at 70-71, 74). The Town's golf course is not the subject of this hearing. However, Mr. Buckley planned to develop the site, which is the

subject of the captioned matter, as a nine hole golf course that would complement the Town's course (Tr. at 77-78, 85).

In addition to his testimony, Mr. Buckley offered documentary evidence to support his contention that he could not pay any civil penalty. The documents are discussed below.

Mr. Buckley is the chairman of the High Hills Golf Course, Inc. (doing business as the Hancock Golf Course) (Tr. at 70-71). Exhibit 6 is a set of US Corporation Income Tax Returns (IRS Form 1120) for the High Hills Golf Course for 2005, 2006, 2007 and 2008. The reported taxable income of the golf course was -\$13,157 in 2005, \$4,341 in 2006, \$12,037 in 2007, and -\$3,773 in 2008 (Tr. at 71-72; Exhibit 6A, 6B, 6C, and 6D).

Mr. Buckley and his wife, Alice, jointly file income tax returns. Exhibit 7 is a set of US Individual Income Tax returns (IRS Form 1040) for 2005, 2006, 2007 and 2008. As reported on the tax returns (line 37), the Buckley's adjusted gross income was \$23,336 in 2005, \$7,906 in 2006, \$4,571 in 2007, and \$8,380 in 2008 (Tr. at 72-73; Exhibits 7A, 7B, 7C, and 7D).

Exhibit 8 is a set of three photographs (8A, 8B, and 8C). They depict the mobile home where Mr. and Mrs. Buckley live. The Buckley's residence is located on the Town golf course property. Mr. and Mrs. Buckley purchased the mobile home in 1987. Mr. Buckley stated that the roof needed to be repaired in 2001 or 2002 when a tree limb fell on it. (Tr. at 78-79, 87.)

Exhibit 9 outlines Mr. and Mrs. Buckley's current financial circumstances. Exhibit 9 provides information about their bank accounts, business interests, and other assets such as their vehicles and real estate, as well as their debts. (Tr. at 87.) The Buckley's cash accounts total \$1,604. They do not own any stock, bonds, or other securities. Mr. and Mrs. Buckley own two cars -- a 2000 Buick and a 1995 Chevrolet Truck. The total value of these vehicles is \$3,500. (Exhibit 9.)

As noted above, the Buckley's operate the Town of Hancock golf course (Tr. at 74-75). According to Exhibit 9, the corporation (High Hills Country Club, Inc.) leases the land from the Town. In 1971, the initial value of the lease was \$8,000 (Exhibit 9).

In 1991, Mr. and Mrs. Buckley purchased a townhouse in Key Largo, Florida for \$75,000. In 2008, they refinanced the Key Largo townhouse for \$289,000. Maintenance fees for the townhouse are \$600 per month. (Exhibit 9.) The last mortgage payment was received on January 1, 2009. This property is now in foreclosure, and the mortgage balance is more than \$236,000 plus interest and other fees. The current market value of the Key Largo property, however, is estimated at \$180,000. (Tr. at 80; Exhibit 15.)

Mr. Buckley purchased 1.3 acres of property in 2007. The location of the property is not part of the hearing record. To finance this purchase Mr. Buckley borrowed \$10,000 from his son. The loan is paid in full, and the current market value of the property is estimated at \$2,000. (Exhibit 9.)

In July 2008, Mr. Buckley purchased about 119 acres of property located on Golf Course Drive and adjacent to the Town of Hancock golf course from James Durfee and others. This property is the subject of the captioned enforcement matter. The purchase price was \$142,000, and Mr. Buckley obtained a mortgage from William Mullen for the same amount to purchase the property. To date, none of the mortgage has been paid. The current market value of the site is estimated at \$215,000. (Tr. at 75-77; Exhibits 9 and 16.)

Mr. and Mrs. Buckley have outstanding personal loans that total \$33,500. Of this amount, \$11,000 is the balance owed on a promissory note for a loan (No. 2396203-67) from the Honesdale National Bank concerning the purchase of golf carts. (Tr. at 82-83; Exhibits 9 and 14.) Mr. Buckley obtained the loan in April 2009, and it matures in April 2012 (Exhibit 14).

Mr. and Mrs. Buckley's total assets and liabilities, and net worth are summarized in the following tables:

<b>Assets</b>		<b>Liabilities</b>	
Bank accounts	\$1,604		
Vehicles	\$3,500		
1.3 acre property (Market value)	\$2,000		
Townhouse (Market value)	\$180,000	Townhouse (Mortgage balance)	(\$236,000)
119 acre property (Market value)	\$215,000	119 acre property (Mortgage balance)	(\$142,000)
		Personal loans	(\$33,500)
<b>Total</b>	<b>\$402,104</b>	<b>Total</b>	<b>(\$411,500)</b>

Assets	\$402,104
Liabilities	(\$411,500)
<b>Net worth</b>	<b>(\$9,396)</b>

Mr. and Mrs. Buckley do not have any liquid assets (Tr. at 88), and their net worth is negative. Consequently, they are not able to pay any civil penalty.

### III. Remediation and Associated Costs

In addition to stipulating about his liability, Mr. Buckley also agreed to implement the relief that Department staff requested in the May 13, 2009 amended complaint (Exhibit 5). Among other requirements, Mr. Buckley must do the following:

1. Retain a qualified professional to develop, implement and maintain an erosion and sediment control plan for the areas on the site already disturbed;
2. Cease all construction activities at the site until Mr. Buckley demonstrates that he can fully comply with the terms and conditions of the SPDES General Permit, which includes, among other things, the development of a SWPPP;
3. Maintain all required records related to compliance with the SWPPP including weekly site inspections;

4. Remove the temporary stream crossing in a manner that avoids the discharge of sediment into the stream; and
5. Stabilize the disturbed banks of the stream.

The required elements of the remediation outlined in the stipulation are similar to the categories that Department staff considered when estimating the economic benefit that Mr. Buckley realized from not complying with the terms and conditions of the SPDES General Permit. Department staff estimated that the total economic benefit was \$26,000. (Exhibit 11.) Similarly, a reasonable estimate of the remediation costs would be \$26,000.

#### IV. Recommended Civil Penalty

With respect to determining the appropriate civil penalty, DEE-1 recommends that that the economic benefit of noncompliance should be recovered (§ IV.C.1). Department staff has provided a reasoned estimate of the economic benefit that Mr. Buckley realized from not complying with the terms and conditions of the SPDES General Permit. Department staff's estimate is \$26,000 (Exhibit 11). Therefore, the minimum civil penalty that the Commissioner should assess is \$26,000.

As discussed above, Department staff's base penalty calculation of \$98,563 (Exhibit 10) is also reasonable. However, the financial information that Mr. Buckley presented at the hearing demonstrates that he could not pay the costs related to remediation much less Department staff's base penalty of \$98,563.

Therefore, the Commissioner should assess a total civil penalty of \$26,000. The Commissioner should suspend the full amount contingent upon Mr. Buckley implementing the remediation outlined in the stipulation (Exhibit 5).

#### **Conclusions**

1. On May 29, 2009, Mr. Buckley violated the narrative water quality standard for turbidity outlined at 6 NYCRR 703.5 when he released large amounts of mud and sediment into Tributary D-70-1.

2. On May 29, 2009, Mr. Buckley violated 6 NYCRR 740-1.4 when he commenced construction activities at the site without a SPDES permit.
3. On July 10, 2009, Mr. Buckley violated 6 NYCRR 740-1.4 when construction activities continued at the site without a SPDES permit.
4. Mr. Buckley violated the terms and conditions of the SPDES General Permit (Permit No. GP-0-08-001) on October 30, 2009 when he failed to install erosion and sediment controls consistent with the standards and specifications for erosion and sediment controls referenced in Part IV.B(1) of the permit.
5. Mr. Buckley violated the terms and conditions of the SPDES General Permit on October 30, 2009 when he failed to maintain erosion and sediment controls consistent with the standards and specifications for erosion and sediment controls referenced in Part IV.A(1) of the permit.

### **Recommendations**

1. The Commissioner should accept the stipulation (Exhibit 5), in which Mr. Buckley admits his liability for the five violations asserted in the May 13, 2009 amended complaint.
2. The Commissioner should order Mr. Buckley to implement the remediation outlined in the stipulation (Exhibit 5).
3. The Commissioner should assess a total civil penalty of \$26,000, and suspend the entire amount contingent upon Mr. Buckley complying with the remediation outlined in the stipulation.

Appendix A        Stipulation  
Appendix B        Exhibit List

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Article 17  
of the Environmental  
Conservation Law of the State of  
New York and Title 6 of the Official  
Compilation of the Codes, Rules and  
Regulations of the State of New York

DEC CASE NO.  
R4-2009-0724-117

Stipulation of Admission to  
Violations in Amended Complaint

Respondent.

Charles H. Buckley

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1. The Department of Environmental Conservation (“Department” or “DEC”) 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”).

2. Department staff served Respondent with an April 26, 2010 Notice of Hearing and Complaint which was subsequently amended by a Notice of Hearing and Amended Complaint dated May 13, 2010.

3. Department staff also served Respondent with an April 26, 2010 Notice of Discovery. A subsequent July 7, 2010 Motion to Compel was submitted to the Department’s Office of Hearings and Mediation Services because no documents were provided.

4. Respondent filed a June 23, 2010 answer to the Department’s Amended Complaint.

5. On August 17, 2010, an Order to Compel Disclosure was issued by ALJ Daniel P. O’Connell ordering Respondent to produce the documents requested in the Notice of Discovery by no later than September 15, 2010.

6. Respondent by signing this Stipulation admits to the facts and violations alleged in the Five Causes of Action in the May 13, 2010 Amended Complaint and waives his right to a hearing on the facts and liability of this case.

7. Respondent acknowledges by this Stipulation that he is liable for a civil penalty for the violations admitted to in this Stipulation but he does not waive the right to a hearing on the amount of a civil penalty to be imposed based on his financial conditions.

8. Respondent further agrees to comply with the Department staff's requests in the Amended Complaint for the following relief and he further agrees that this relief shall be incorporated in a Commissioner's Order and enforceable there under binding upon him and his successors (including successors in title) and assigns and any agents working under him:

-The authorization to commence construction activities under the General Permit is revoked;

-Respondent to immediately retain a qualified professional to develop and oversee implementation of an erosion and sediment control plan for site areas already disturbed. Such plan shall include inspections on a weekly basis by a qualified inspector;

-Respondent to cease any construction activities at the site unless and until Respondent has demonstrated to the Department that he has met the authorization criteria in Section B. 2 of the General Permit and that he has a SWPPP that meets the requirements of the General Permit.

-Respondent to maintain a copy of the SWPPP on site with copies of the weekly site inspection reports. Only activities authorized by this Stipulation shall be conducted at the site until Respondent receives his authorization to discharge under the General Permit; and

-Respondent to remove as expeditiously as practicable (weather conditions and stream protection issues permitting) the temporary stream crossing in a manner that avoids the discharge of turbid waters to the stream. The banks of the stream shall be seeded and mulched to minimize any erosion. Respondent shall notify the Department within 24 hours prior to commencing the removal of the temporary crossing. Any future stream crossing shall be constructed in accordance with the New York State Standards and Specifications for Temporary Access Waterway Crossing (Page 5A.79-86).

9. Respondent waives his right to appeal or challenge this Stipulation before the Commissioner in this proceeding and he waives any rights to challenge or appeal this Stipulation in any court proceeding or appeal for any reason, and he further acknowledges that he has discussed this Stipulation with his attorney of record, Robert G. Davis, and he understands its contents.

\_\_\_\_\_/S/\_\_\_\_\_  
Date: September 24, 2010

Respondent  
Charles H. Buckley  
P.O. Box 518  
Hancock, New York 13783

\_\_\_\_\_/S/\_\_\_\_\_  
Date: September 27, 2010

Richard Ostrov  
Regional Attorney  
New York State Department  
of Environmental Conservation  
Region 4  
1130 North Westcott Road  
Schenectady, New York 12306  
(518)-357-2048

NEW YORK STATE:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Environmental  
Conservation Law of the State of New  
York article 17, and Title 6 of the  
Official Compilation of Codes, Rules and  
Regulations of the State of New York                      Exhibit List  
parts 703 and 750

by

Charles H. Buckley

DEC Case No.  
R4-2009-0724-117

Respondent.

September 29, 2010

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1. Notice of hearing and amended complaint dated May 13, 2010 with Attachments A through M. - Received.
  - A. Attachment A - SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-08-0001) effective May 1, 2008 to April 30, 2010.
  - B. Attachment B - Aerial Photograph of Hancock (Delaware County).
  - C. Attachment C - Hancock Golf Course web pages.
  - D. Attachment D - Notice of Intent (NYR 10R637) for the Hancock Golf Course dated August 26, 2009.
  - E. Attachment E - Acknowledgement of Notice of Intent dated September 11, 2009.
  - F. Attachment F - Contour map depicting Tributary D-70-1, P270, Tributary D-71-1, and the West Branch of the Delaware River.
  - G. Attachment G - Photographs of the site from the May 29, 2009 site inspection (water quality violation).
  - H. Attachment H - Photographs of the site.
  - I. Attachment I - Notice of Violation dated May 29, 2009.

- J. Attachment J - Photographs of the site from the July 10, 2009 site inspection (temporary water crossing).
  - K. Attachment K - Photographs of the site.
  - L. Attachment L - Notes concerning Department staff's October 30, 2009 site visit.
  - M. Attachment M - Standard and specifications for stabilized construction entrance.
2. Respondent's answer dated June 22, 2010. - Received.
  3. Department staff's motion to compel discovery dated July 7, 2010. - Received.
  4. Order to compel disclosure dated August 17, 2010. - Received.
  5. Stipulation of admission to violations in amended complaint. - Received.
  6. United States (US) Corporation Income Tax Return (IRS Form 1120) by High Hills Golf Course, Inc.
    - A. 2005 - Received.
    - B. 2006 - Received.
    - C. 2007 - Received.
    - D. 2008 - Received.
  7. US Individual Income Tax Return (IRS Form 1040) by Charles H. Buckley and Alice Buckley.
    - A. 2005 - Received.
    - B. 2006 - Received.
    - C. 2007 - Received.
    - D. 2008 - Received.
  8. Photographs (A, B, and C). - Received.
  9. Respondent's financial information. - Received.
  10. Department staff's base penalty calculation. - Received
  11. Department staff's economic benefit calculation. - Received.

12. Commissioner's Civil Penalty Policy (DEE-1) dated June 20, 1990. - Official Notice.
13. Division of Water technical and operational guidance series (TOGS) 1.4.2 (Compliance and Enforcement of SPDES Permits), dated June 24, 2010. - Official Notice.
14. Promissory Notice from the Honesdale National Bank (Loan No. 2396203-67) - Received.
15. Mortgage Foreclosure Complaint Case No. 09CA613 (Monroe County, Florida). - Received.
16. Purchase and Sales Agreement for real property Tax Map No. 429-15.11, Town of Hancock, Delaware County (Bear Brook Road Property). - Received.