

**STATE OF NEW YORK**  
**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
625 Broadway  
Albany, New York 12233-1010

In the Matter of the Application for  
Reinstatement of Revoked Shellfish Digger's Permit Pursuant to  
Environmental Conservation Law § 71-0927

- by -

**KYLE M. FRISINA,**

Applicant.

DEC Shellfish Permit No. 24333

**DECISION OF THE ASSISTANT COMMISSIONER**

April 27, 2016

## DECISION OF THE ASSISTANT COMMISSIONER

Effective May 20, 2010, staff of the New York State Department of Environmental Conservation (DEC or Department) revoked New York State shellfish digger's permit no. 24333 that had been issued to Mr. Kyle M. Frisina. The revocation, which was for a period of five years, arose from Mr. Frisina's conviction for taking shellfish from uncertified lands (on three separate occasions within a five-year period) in violation of section 13-0309 of the Environmental Conservation Law (ECL).

Pursuant to ECL 71-0927(1), any person convicted of violating ECL 13-0309(1)(a) two or more times within five years, shall have his or her permit revoked and shall not be re-permitted for a period of at least five years thereafter. Pursuant to ECL 71-0927(4), revocations for violations of ECL 13-0309(1)(a) are automatic upon the second conviction and do not require a hearing.

Mr. Frisina's initial request in 2010 for reinstatement of his permit was denied (see Matter of Kyle M. Frisina, Decision of the Assistant Commissioner, November 8, 2010, at 3).<sup>1</sup> Subsequently, Mr. Frisina requested reinstatement of his permit by letter dated May 25, 2013. Based upon a review of the submissions at that time, I denied the application of Kyle M. Frisina for reinstatement of his shellfish digger's permit (see Matter of Kyle M. Frisina, Decision of the Assistant Commissioner, September 12, 2013, at 1-3).

By letter dated January 2, 2014, Mr. Frisina again requested reinstatement of his shellfish digger's permit. He later forwarded two letters on his behalf: (a) a letter dated February 6, 2014 from Monica Prina, MSW, a social worker with the Brookhaven Family Center; and (b) a letter dated February 21, 2014 from Peter Piraino, LMSW, Program Director at The Dunes. Department staff, by letter dated February 27, 2014, discussed the serious nature of Mr. Frisina's violations and the threat that those violations had posed to the public health and the environment and recommended that the full five-year revocation period be enforced against Mr. Frisina. By letter dated April 11, 2014, I authorized Mr. Frisina to file a reply to Department staff's February 27, 2014 letter. On September 8, 2014, attorneys for Mr. Frisina submitted a letter in support of reinstating the permit. The information submitted on Mr. Frisina's behalf, however, presented no compelling reasons to reduce the revocation period and was otherwise insufficient to warrant reinstatement in light of the serious public health and safety concerns associated with the prior violations. Accordingly, no action was taken at that time with respect to reinstating the permit.

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<sup>1</sup> As noted in footnote 2 of my November 8, 2010 decision in this matter, Commissioner Policy CP-2, which was issued on August 22, 1997, authorizes the Assistant Commissioner for Hearings and Mediation Services to hear and consider applications for reinstatement of a shellfish digger's permit, and to issue decisions on applications to reinstate licenses and permits that have been revoked pursuant to ECL 71-0927.

The five year revocation period ended on May 19, 2015, and upon application of Mr. Frisina, Department staff issued a shellfish digger's permit to him on May 20, 2015. Accordingly, any request for reinstatement made prior to that date is moot.

For the New York State Department of  
Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Louis A. Alexander  
Assistant Commissioner for Hearings  
and Mediation Services

Albany, New York  
April 27, 2016