

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (ECL) Article 15, Article 17 and Title 6
of the Official Compilation of Codes,
Rules and Regulations of the State of
New York (6 NYCRR)

ORDER ON CONSENT

File No. R4-2008-0918-141

- by -

Albany County Department of Public Works
449 New Salem Road
Voorheesville, NY 12186

Respondent

WHEREAS:

1. Respondent, Albany County Department of Public Works, is located at 449 New Salem Road, Voorheesville, New York.
2. Respondent is a person as defined at 6 NYCRR 608.1(n).
3. Regulations at 6 NYCRR 608.1(p) define a protected stream as: “any stream or particular portion of a stream for which there has been adopted by the department or any of its predecessors any of the following classifications or standards: AA, AA(t), A, A(t), B, B(t) or C(t). Streams designated (t)(trout) also include those more specifically designated (ts)(trout spawning).”
4. ECL 15-0505(1) provides that “No person, local public corporation or interstate authority shall excavate or place fill below the mean high water level in any of the navigable waters of the state, or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state and that are inundated at mean high water level or tide, without a permit issued pursuant to subdivision 3 of this section. For the purposes of this section, fill shall include, but shall not be limited to, earth, clay, silt, sand, gravel, stone, rock, shale, concrete (whole or fragmentary), ashes, cinders, slag, metal, or any other similar material whether or not enclosed or contained by (1) crib work of wood, timber, logs, concrete or metal, (2) bulkheads and cofferdams of timber sheeting, bracing and piling or steel sheet piling or steel H piling, separated or in combination. Nothing contained in this section is intended to be, nor shall be construed to limit, impair or affect the memorandum of understanding which any state department enters into with the Department of Environmental Conservation or the general powers and duties of the Department of Transportation relating to canals or the general powers and duties of the Department of Environmental Conservation relating to flood control.”

5. ECL 15-0513 provides that “it shall be unlawful for a subcontractor, employee or agent of a person or public corporation, or of a state department to knowingly and intentionally act, or a prime contractor of a person, public corporation or state department to act with or without an intention to violate the provisions of sections 15-0501, 15-0503 or 15-0505 in disregard of specifications provided in a construction contract protecting against stream damage.”
6. ECL 17-0501 provides that “it shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department. pursuant to section 17-301.”
7. Respondent was issued an Article 15 permit (DEC# 4-0120-00143/00001) (“permit”), effective July 3, 2007, to replace the Gifford Hollow Road bridge over the Switz Kill (a class C(t) stream) (“stream”), which is located in Berne, New York (“project”).
8. Special conditions #9 and #14 in Respondent’s permit state that there shall be no discharge of sediment or turbid waters to waterbodies and that Respondent shall isolate the work area by the use of sandbags, cofferdam, or piping or pumping around the work area.
9. Special condition #6 in Respondent’s permit states that excavated materials shall not be placed within 100 feet of the waterbody.
10. On August 11, 2008 Department staff conducted an inspection of the project and observed that Respondent had not properly maintained a cofferdam. Two feet of cofferdam by the stream bank were not complete and this allowed turbidity to flow downstream. The water flowing downstream from the cofferdam was a brown color.
11. The failure of Respondent to maintain a cofferdam and the resulting turbidity in the stream are violations of permit special conditions #9 and #14 and ECL 17-0501.
12. During the August 11, 2008 inspection Department staff also observed that Respondent had placed soil that was excavated from the project site within 100 feet of the stream. This placement of soil was also within the mean high water mark of the stream. Staff also observed that Respondent had located the site offices for the project within 10 feet of an adjacent class C(t) tributary.
13. Respondent’s placement of excavated soil within 100 feet of the stream, which is also within the mean high water mark of the stream and Respondent’s locating the site offices for the project within 10 feet of an adjacent class C(t) tributary are violations of permit special condition #6, ECL 15-0505(1) and ECL 15-0513.
14. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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

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. 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, 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. Respondent 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 Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

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

VIII. 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 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 Respondent, their agents, their servants, their employees, their successors and their assigns;

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

D. 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 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.

IX. 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. Respondent 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 Respondent, the Department shall notify Respondent 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 Respondent 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.

X. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations in this Order.

DATED: _____, 2008
Rotterdam, New York

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

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT
Albany County Department of Public Works

Respondent hereby consents to the issuing and entering of this Order, waives their right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

SIGNED: _____

TITLE: _____

DATE: _____

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

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
Qualified in the County of:
My Commission Expires: