

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law (“ECL”)  
Article 17 by:

**ORDER ON CONSENT**

File No. R4-2008-0402-45

-by-

George Andrinopoulos

Respondent

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WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17 and the rules and regulations promulgated thereunder.
2. Respondent, George Andrinopoulos, is the owner of an approximately 54 acre parcel (Tax ID #77.00-1-14.2) located at 241 Campbell Road, in the Town of Ashland, Greene County, New York (“site”). Unnamed Tributary 7 of the Batavia Kill (H-240-82-117-7, Class C) runs through the site.
3. Regulations at 6 NYCRR Part 750-1.4(b) provide that storm water discharged to surface or ground waters from construction activities involving soil disturbances of greater than one acre are subject to a State Pollutant Discharge Elimination System (“SPDES”) permit.
4. The Department of Environmental Conservation (“Department”) has issued a General Permit for Stormwater Discharges from Construction Activity, GP-02-01 (“permit”).
5. A discharger, owner or operator must submit a Notice of Intent (“NOI”) to the Department for coverage under the permit prior to commencing any construction activity involving a disturbance of greater than one acre of land that discharges to the waters of the state.
6. The NOI must contain a certification that a Storm Water Pollution Prevention Plan (“SWPPP”) has been completed for all anticipated disturbances associated with a common plan of development or sale and permit coverage must be maintained for all planned disturbances associated with the common plan of development or sale. Larger common plan of development or sale describes a situation in which multiple construction activities are occurring, or will occur, on a contiguous area.
7. A SWPPP must be based on sound engineering practices and must include erosion and sediment controls during construction and post-construction stormwater control practices for road construction projects.

8. For activities which do not comply with the Department's technical standards, authorization to discharge stormwater under the SPDES permit begins no sooner than sixty (60) business days from the receipt of a completed NOI.
9. The permittee submits a Notice of Termination to the Department once construction is complete and when the site is stabilized for unpaved areas and areas not covered by permanent structures.
10. A General Permit for Stormwater Discharges from Construction Activity, GP-02-01 permit does not become effective until all other applicable ECL permits are obtained including but not limited to stream protection and wetland permits under ECL Articles 15 and 24, respectively.
11. 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..."
12. Regulations at 6 NYCRR 703.2 set narrative water quality standards for Class C streams for turbidity: "No increase that will cause a substantial visible contrast to natural conditions."
13. On November 16, 2007, Department staff inspected the site and observed that Respondent had commenced construction at the site, disturbing an area greater than one acre. Construction activities observed at the site included the redirection of a stream, Tributary 7 of the Batavia Kill and excavation with the intent of enlarging an existing pond within the stream. The construction activities at the site and the lack of proper erosion and sediment controls resulted in the deposition of sediment in Tributary 7 and in the Batavia Kill. Tributary 7 is .5 miles from the area of disturbance and the Schoharie Reservoir is approximately 6 miles away.
14. On November 27, 2007, Respondent was sent a Notice of Violation, via certified mail, in which Respondent was ordered to cease all work and immediately stabilize the site. Respondent did not stop work and no attempt was made to stabilize the site.
15. Department staff have reviewed Department records and determined that Respondent has failed to submit a NOI for coverage under NYSDEC General Permit for Stormwater Discharges from Construction Activity, GP-02-01 for the construction activity at the site.
16. Respondent's commencement of construction activities at the site without having a storm water permit is a violation of regulations at 6 NYCRR Part 750-1.4(b).
17. Inspections of the site by Department staff on November 16, 2007, February 7, 2008 and February 15, 2008, revealed sediment deposition and resulting turbidity in Tributary 7 of the Batavia Kill.
18. Respondent violated ECL 17-0501 and water quality regulations at 6 NYCRR 703.2 by causing turbidity in Tributary 7 of the Batavia Kill.

19. Section 71-1929 of the ECL provides that any violator of the provisions of Article 17 of the ECL is subject to a civil penalty not to exceed \$37,500 per day for each violation, as well as injunctive relief for violations.

20. Respondent has affirmatively waived his 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. In respect to the aforesaid violations, a civil penalty in the amount of SEVENTY FIVE THOUSAND DOLLARS (\$75,000) shall be assessed. TWENTY THOUSAND DOLLARS (\$20,000) of the civil penalty is due in accordance with the following schedule:

1. \$5,000 with the return of the signed and notarized copy of this Order;
2. \$5,000 by October 1, 2009;
3. \$5,000 by January 1, 2010; and
4. \$5,000 by April 1, 2010.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, FIFTY FIVE THOUSAND DOLLARS (\$55,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

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. 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 this Order by Respondent and its successors (including successors in title) and assigns.

IV. Except as to settling the specific violations referenced herein, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his/her designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. Respondent shall allow duly authorized representatives of DEC access to the site without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder, and the SPDES permit.

VI. 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.

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

DATED: \_\_\_\_\_, 2009  
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

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.

\_\_\_\_\_  
George Andrinopoulos

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

STATE OF )  
 )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:

### Schedule of Compliance

1. Upon the effective date of this Order, Respondent shall ensure that the site remains stabilized at all times.
2. Within 30 days of notification by the Department that downstream restoration work on Unnamed Tributary 7 (H-240-82-117-7) of the Batavia Kill is required, Respondent shall submit to the Department, as well as to DEP and the USACOE, a work plan for downstream restoration, prepared by a New York State licensed professional engineer. Said plan shall include a schedule, which once approved, shall become enforceable under this Order, and shall be approved by the Department prior to commencement of work.
3. Respondent shall allow duly authorized agents and employees of the Department, DEP, and the USACOE, access to any facility, site or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.
4. If the Respondent wishes to reconstruct the pond, then within 60 days of the effective date of this Order, Respondent shall submit to the Department, as well as to DEP and the USACOE, an engineering plan, prepared by a New York State licensed professional engineer. In addition, Respondent must apply for and receive any appropriate permits as may be necessary for pond and dam construction.
5. Compliance with the terms and conditions of the Schedule of Compliance is not a defense to any subsequent water quality violations.