

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

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Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 3656

December 18, 2014

Annmarie Ennis  
P.O. Box 938  
Center Moriches, NY 11934

Re: Order of Consent  
R4-2014-0131-161

Dear Ms. Ennis:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: S. Swenson

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law Article 15

ORDER ON CONSENT  
File No. R4-2014-1031-161

by

Annmarie Ennis  
P.O. Box 938  
Center Moriches, NY 11934

Respondent

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WHEREAS:

1. The Department of Environmental Conservation ("Department") 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). In particular, DEC regulates and controls the water resources of the state pursuant to ECL §15-0101 *et seq* and the rules and regulations promulgated, in part, under 6 NYCRR § 608.
2. Respondent, Annmarie Ennis, owns property located along County Highway 36, Roxbury, New York (Delaware County) ("site").
3. Regulations at 6 NYCRR § 608.1 (p) defines 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. Regulations at 6 NYCRR § 608.1(a) and (b) defines banks and bed as the following:
  - (a) Banks means that land area immediately adjacent to, and which slopes toward, the bed of a watercourse, and which is necessary to maintain the integrity of a watercourse. For purposes of this Part, a bank will not be considered to extend more than 50 feet horizontally from the mean high water line; with the following exception: Where a generally uniform slope of 45 degrees (100 percent) or greater adjoins the bed of the watercourse, the bank is extended to the crest of the slope or the first definable break in slope, either a natural or constructed (i.e. road or railroad grade) feature, lying generally parallel to the watercourse.
  - (b) Bed means that land area of a watercourse covered by water at mean high water.
5. Batavia Kill is a Class B (ts) stream and therefore its banks and beds are protected.
6. Regulations at 6 NYCRR § 608.2(a) provide that: "no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part."
7. On October 29, 2014, staff observed that both banks of the Batavia Kill had been graded to create access for wheeled machinery to cross the stream.

8. Respondent has disturbed the bed and banks of the Batavia Kill without an Article 15 permit, a violation of 6 NYCRR 608.2(a).
9. ECL Section 71-1127 provides for a civil penalty of up to \$2500 per day for a violation of Article 15 and up to \$500 for each day that such violation continues. Injunctive relief is also available.
10. Respondent has affirmatively waived her 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. With respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) of which ONE THOUSAND DOLLARS (\$1,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

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

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

V. 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, her directors, officers, employees, servants, agents, successors or assigns.

VI. 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.

VII. 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.

VIII. All communications except where otherwise specifically directed should be sent to:

Steven Swenson  
New York State Department  
of Environmental Conservation  
Region 4 - Stamford Office  
65561 State Highway 10, Suite 1  
Stamford, NY 12167-9503  
607-652-2645

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

X. 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, her agents, her servants, her employees, her successors and her 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.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: *December 18* 2014  
Rotterdam, NY

Joe Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Keith Goertz  
Regional Director  
Region 4



## Schedule of Compliance

1. All construction work involving the bed and banks of the Batavia Kill must cease immediately.
2. Respondent must submit to the Department for approval, a plan which addresses the crossing of the stream with equipment such as the use of a temporary bridge, or other measures.
3. Once the plan is approved and measures installed, work may commence. All disturbed areas must be seeded and mulched within 7 days after construction is complete.