

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law Article 15,  
and Article 24

- by -

**ORDER ON CONSENT**  
File No. R4-2008-0501-61

Scott Blair

Respondent

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WHEREAS:

1. The Department has jurisdiction over the regulation and control of the water resources of the state pursuant to Environmental Conservation Law (“ECL”) Article 15 and the rules and regulations promulgated pursuant thereto.
2. The Department has jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the ECL and the rules and regulations promulgated pursuant thereto.
3. Respondent, Scott Blair, 3962 NY 150, West Sand Lake, New York, is the owner of a parcel located at the intersection of County Route 53 and Parker Road, in the Town of Sand Lake, New York (Rensselaer County) ("site"). Respondent’s property is located along the banks of a C(ts) stream.

Article 15 Violations

4. Respondent is a person as defined at 6 NYCRR 608.1(n).
5. 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).”
6. Regulations at 6 NYCRR 608.1(a) and (b)define 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.

7. 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.”

8. On November 14, 2007, Department staff conducted an inspection at the site and observed that Respondent had constructed a driveway across the stream and replaced a 10 inch drainage tile in the stream with a 42 inch diameter culvert. This work resulted in the disturbance of the bed and banks of the stream and was done without an Article 15 permit.

9. Respondent's work in the stream without an Article 15 permit is a violation of 6 NYCRR 608.2(a).

10. ECL Section 71-1127(1) provides for up to \$500 in civil penalties for each violation of any duty imposed by Article 15, or any regulation promulgated thereunder, and \$100 dollars for each day the violation continues. Injunctive relief is also available.

#### Article 24 Violations

11. On November 14, 2007, Department staff conducted an inspection at the site and observed that Respondent had placed fill in the wetland (AP-22), for the purpose of creating a driveway and in the area adjacent to the wetland, for the purpose of creating an elevated and level site for a house and septic system.

12. ECL Section 24-0701(2) and 6 NYCRR 663.4(d)(20) require that a permit be issued to place fill in a protected wetland and the area adjacent to the wetland.

13. Respondent's placement of fill in the wetland and the area adjacent to the wetland without a permit is a violation of ECL Section 24-0701 and 6 NYCRR 663.4(d)(20).

14. ECL Section 71-2303(1) provides for up to \$3,000 in civil penalties for each violation of a regulation and the restoration of the affected freshwater wetland to its condition prior to the violation.

15. 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 ONE THOUSAND DOLLARS (\$1,000) shall be assessed. Payment of the civil penalty is due upon Respondent's 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, his agents, employees, and all persons, firms, corporations acting under or for it.

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

Regional Engineer  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

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

IX. 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, his agents, his servants, his employees, his successors and his 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.

X. 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.

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

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.

\_\_\_\_\_  
Scott Blair

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:

## SCHEDULE OF COMPLIANCE

1. By May 15, 2009, Respondent shall narrow the driveway from Parker Road to a maximum base width of 14 ft.
2. By May 15, 2009, Respondent shall remove all of the fill placed in the 100 ft. adjacent area.
3. Respondent shall submit to the Department a map identifying the location of the driveway, house and septic system.
4. Immediately upon the completion of the fill removal, and/or final grading of the house site, if constructed, Respondent shall seed and mulch any disturbed soils.