

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental  
Conservation Law Article 17

-by-

**ORDER ON CONSENT**  
File No. R4-2009-0703-109

Areti Cherpelis

Respondent

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WHEREAS:

1. Respondent, Areti Cherpelis, is the owner of a 187.5 acre parcel (Tax ID #161.00-2-75) located at 18 Auffarth Road, in the Town of Lexington, Greene County, New York ("site"). Unnamed Tributary 6c of the West Kill (H-240-82-128-6c), a Class C(TS) stream, runs through the site.

Stormwater Permit Violation

2. 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.

3. The Department of Environmental Conservation ("Department") has issued a General Permit for Stormwater Discharges from Construction Activity, GP-0-08-001 ("permit").

4. 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.

5. 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.

6. 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 certain construction projects.

7. 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.

8. 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.
9. A General Permit for Stormwater Discharges from Construction Activity, GP-0-08-001 permit does not become effective until all other applicable Environmental Conservation Law (“ECL”) permits are obtained including but not limited to stream protection and wetland permits under ECL Articles 15 and 24, respectively.
10. On March 14, 2007, the New York City Department of Environmental Protection (“NYCDEP”) 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 construction of several ponds with outfalls to Tributary 6c of the West Kill. The construction activities at the site and the lack of proper erosion and sediment controls resulted in a substantial visible contrast to the natural conditions of Tributary 6c of the West Kill.
11. On April 13, 2007, the NYCDEP sent a Notice of Violation for construction of four ponds and soil stockpiling resulting in greater than two acres of disturbance without first obtaining approval from NYCDEP for a required Stormwater Pollution Prevention Plan. The NOV advised Respondent to stop all earth moving activities, stabilize disturbed areas and submit a Stormwater Pollution Prevention Plan.
12. On February 19, 2009, Respondent filed an application with NYCDEP
13. On April 8, 2009, NYCDEP issued a comment letter on the Stormwater Pollution Prevention Plan submitted by Respondent on February 19, 2009.
14. Site visits by NYCDEP staff on February 29, 2009 determined that earthwork had continued and the lack of adequate erosion and sediment controls were continuing to impact Tributary 6c of the West Kill.
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-0-08-001 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. 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...”
18. The construction activities conducted at the site by Respondent, which have resulted in the substantial visible contrast to the natural conditions of Tributary 6C of the West Kill, is a violation of ECL 17-0501.

## Article 15 Violation

19. Respondent is a person as defined at 6 NYCRR 608.1(n).
20. 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).”
21. 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.
22. ECL 15-501(1) and 6 NYCRR 608.2(a) provide that no person or local public corporation shall 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.
23. The disturbance of Unnamed Tributary 6c of the West Kill (H-240-82-128-6c), a Class C(TS) stream, as a result of Respondent’s construction activities on the site is a violation of ECL 15-501(1) and 6 NYCRR 608.2(a).
24. 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. In respect to the aforesaid violations, a civil penalty in the amount of THIRTY FIVE THOUSAND DOLLARS (\$35,000) shall be assessed. TEN THOUSAND DOLLARS (\$10,000) of the civil penalty is due in accordance with the following schedule:

1. \$2,500 with the return of the signed and notarized copy of this Order;
2. \$2,500 by January 10, 2010;
3. \$2,500 by April 10, 2010, and
3. \$2,500 by July 10, 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, TWENTY FIVE THOUSAND DOLLARS (\$25,000), 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 his successors (including successors in title) and assigns.

IV. Except as to settling the specific violation of commencing construction without a SPDES permit, 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 her right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

\_\_\_\_\_  
Areti Cherpelis

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. Upon the effective date of this Order, Respondent shall immediately stop all work at the site other than that recommended by a qualified professional as being necessary to stabilize the site and prevent further impact to water quality, until such time as the Department issues a determination in writing that Respondent may recommence all or a portion of the work.
2. Respondent shall immediately retain a qualified professional to develop an erosion and sediment control plan and inspect the site every 7 days to determine the effectiveness of the erosion and sediment controls installed. The erosion and sediment controls shall be modified as directed by the qualified professional whenever the erosion control practices are found to be ineffective in preventing the mobilization and transport of solids. Electronic copies of the inspection reports shall be submitted to the Department and NYCDEP within 48 hours of their completion as follows: [Cfield@dep.nyc.gov](mailto:Cfield@dep.nyc.gov) and [calambla@gw.dec.state.ny.us](mailto:calambla@gw.dec.state.ny.us).
3. Within 5 days of the effective date of this Order, Respondent shall submit to the Department, as well as to the NYCDEP, a plan to stabilize exposed areas and remediation of problem areas causing erosion. Said plan shall be prepared by a New York State licensed professional engineer. Said plan shall be approved by the Department and shall include a schedule with a completion date no later than November 1, 2009 and once approved shall become enforceable under this Order.
4. Within 15 days of the effective date of this Order, Respondent shall submit to the Department and NYCDEP for approval, a complete SWPPP that meets the minimum requirements of the SPDES permit. If pond 5 is to be re-constructed, the SWPPP must include adequate details to ensure the proper construction. The SWPPP must address all comments contained in the NYCDEP comment letter dated April 8, 2009. The SWPPP must include an implementation date and a completion date of no later than June 1, 2010. The SWPPP must also provide sufficient details as to the purpose and use of the ponds so that the Department may determine if other permits are required. Once approved by the Department and the NYCDEP, the SWPPP must be implemented.
5. Compliance with the terms and conditions of the Schedule of Compliance is not a defense to any subsequent water quality violations.