

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED

7016 0340 0000 4616 6000

February 5, 2018

David Trapani
61 Harts Road
East Moriches, NY 11940

Re: Order on Consent
R4-2018-0118-2

Dear Mr. Trapani:

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

This will also acknowledge receipt of \$500 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: G. Walters

**STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of the Environmental Conservation Law ("ECL") Article 24, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

-by-

ORDER ON CONSENT

R4-2018-0118-2

David Trapani
61 Harts Road,
East Moriches, NY 11940

Respondent.

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation ("Department") is a department of the State of New York which is authorized to preserve, protect, and conserve freshwater wetlands and the benefits derived therefrom under the Environmental Conservation Law ("ECL"). Specifically, the Department regulates and controls the water resources of the state pursuant to ECL Article 24, and the rules and regulations promulgated, in part, under Title 6 of the New York Code of Rules and Regulations ("6 NYCRR"), Parts 663 and 608.

Respondent

2. Respondent, David Trapani, owns a parcel of property located at 57 Eberle Road, Kinerhook Lake, New York, and identified as Columbia County Tax Parcel 14.17-1-18 ("Site").

3. The Site owned by Respondent is located within an area classified as a Class 2 protected freshwater wetland, identified by the Department as New York State Regulated Freshwater Wetland K-109.

4. The Site is also located adjacent to a lake classified by the Department as a Class B protected water body.

5. Respondent is a person as defined at 6 NYCRR Part 663.2(w).

VIOLATIONS

6. On or about January 3, 2018, Department staff observed that Respondent had completed construction on a shoreline retaining wall for which no permit application was submitted.

7. Regulation 6 NYCRR 663.4(d) sets forth various activities for which a permit is required in regulated freshwater wetland areas prior to engaging in those activities. With specific regard to activities conducted by Respondent, a permit is required for:

- a) "Filling, including filling for agricultural purposes" (6 NYCRR 663.4(d) at Item 20); and
- b) "Grading, and dredging not included in item 26" (i.e., dredging "to maintain present navigation channels"); (6 NYCRR 663.4(d) at Item 25).

8. Respondent violated 6 NYCRR 663.4(d), Item 20 by constructing a shoreline retaining wall, thereby filling in a freshwater wetland and adjacent area.

9. Respondent violated 6 NYCRR 663.4(d), Item 25 by constructing a shoreline retaining wall, thereby grading and dredging soil in a freshwater wetland and adjacent area.

10. Furthermore, ECL §24-0701(1) provides in relevant part that "any person desiring to conduct on freshwater wetlands as so designated thereon any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title."

11. ECL §24-0701(2), in turn, identifies said regulated activities as including:

any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom.

12. Respondent violated ECL §24-0701(1) by constructing a shoreline retaining wall, thereby altering freshwater wetland without a permit.

13. Regulation 6 NYCRR 608.2(a) provides that with very limited exceptions inapplicable to the instant circumstances, "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."

14. Regulation 6 NYCRR 608.5 further provides that "No person . . . may excavate from or place fill, either directly or indirectly, 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 this Part."

15. Respondent violated 6 NYCRR 608.2(a) by constructing a shoreline retaining wall,

thereby disturbing the waters of a protected stream.

16. Respondent violated 6 NYCRR 608.5 by constructing a shoreline retaining wall, thereby excavating and/or placing fill in navigable waters.

Civil Penalty

20. ECL § 71-2303(1) provides that any person who violates any provision of Article 24 of the ECL, or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty not to exceed \$11,000 for every such violation, and may be required to restore the affected freshwater wetland to its condition prior to the violation.

Waiver of Hearing

21. Respondent has affirmatively waived its right to a hearing as provided by law, and has consented to the issuance of this Order, and has agreed to be bound by the provisions, terms and the conditions of this Order.

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

I. **Civil Penalty.** Respondent is hereby assessed a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000). FIVE HUNDRED DOLLARS (\$500) 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 bank/cashier's check or money order made payable to the NYS Department of Environmental Conservation.

The balance of FIVE HUNDRED DOLLARS (\$500) is suspended and shall not be payable, provided that Respondent commits no further violations of ECL Article 15 or 24 for one (1) year from the effective date of this Order. Nothing in this Order shall preclude Respondent from incurring additional penalties if the Department discovers additional violations subsequent to the execution of this Order.

II. **Binding Effect.** The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or controlled by it.

III. **Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

For the Department:

Georgette Walters
Division of Fish, Wildlife and Marine Resources
NYS Department of Environmental Conservation
Region 4
65561 State Hwy. 10, Suite 1,
Stamford, NY 12167-9503

For the Respondent:

David Trapani
61 Harts Road,
East Moriches, NY 11940

IV. **Summary Abatement.** 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.

V. **Indemnification.** 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, its directors, officers, employees, servants, agents, successors or assigns, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

VI. **Modification.** 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, such change to be made only upon written agreement of the parties.

VII. **Effective Date.** This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

VIII. **Scope.** 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 Department or State may have against Respondent for any other violations of the ECL, rules or regulations promulgated 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, its agents, its servants, its employees, its successors and its assigns; and

C. 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. **Access.** To ensure compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

XI. **Termination.** The Order shall terminate upon Respondent's complete compliance, as determined by the Department, with the terms, provisions and conditions of this Order.

DATED: February 1, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director

CONSENT BY RESPONDENT

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

David Trapani
Signed: [Signature]
Date: 1-30-18

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

On the 30 day of January in the year 2018, before me, the undersigned,
personally appeared David Trapani, personally known
(Full name)
to me who, being duly sworn, did depose and say that he resides at
101 Harts Rd, East Norwich NY 11940
(Full mailing address)
and who executed the above instrument.

[Signature]
Notary Public
Qualified in the County of:
My Commission Expires: 6/30/18

Christine Madgett
Notary Public - State of New York
NO. 01746387026
Qualified in Suffolk County
My Commission Expires 6/30/18