

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED

May 7, 2019

7017 1070 0001 0125 7742

Kurt Decker
1418 State Highway 7
Afton, NY 13730

7017 1070 0001 0125 7759

Hank Decker and Son Logging
2461 Route 41
Nineveh, NY 13813

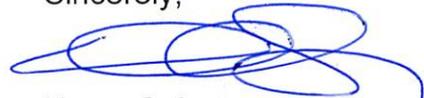
Re: Order on Consent
R4-2019-0408-23
Kurt Decker and
Hank Decker and Son Logging

Dear Mr. Decker:

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

This will also acknowledge receipt of \$1,000 of the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Brady
C. VanMaaren
J. Rider



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violation of
Article 15 of New York State Environmental
Conservation Law

-by-

ORDER ON CONSENT
R4-2019-0408-23

Kurt Decker
1418 State Highway 7
Afton, NY 13730

AND

Hank Decker and Son Logging
2461 Route 41
Nineveh, NY 13813

Respondents

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is a department of the State of New York which, pursuant to Titles 1 and 5 of Article 15 of the Environmental Conservation Law ("ECL"), is authorized to regulate and control the water resources of the state of New York.

Respondents

2. Respondent Kurt Decker owns/operates Hank Decker and Son Logging, and resides at 1418 State Highway 7, Afton, New York (Chenango County).

3. Respondent Hank Decker and Son Logging, located at 2461 Route 41, Nineveh, New York (Broome County), is a business providing services in the field of building materials & supplies as well as engaging in the business of logging.

Facts

4. On April 1, 2019 and April 4, 2019, Department staff inspected the site located at 572 Huff Road, Delhi, New York (Delaware County) ("site") and determined that Respondents had been running a logging operation for approximately three weeks as employed by the owner of the site. Department staff determined that Respondents have been crossing an unnamed stream (FIN# D-71-61-5-3), with a classification of C(T), without first obtaining an Article 15 Permit.
5. At the time of the inspections, Department staff also observed turbid water and discharge of sediment in the stream.

Laws and Regulations

6. Regulations at 6 NYCRR 608.2 (a) provide that *"Except as provided in subdivision (b) of this section, 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. ECL 17-1501(1) 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 pursuant to section 17-0301."*

Violations

8. By crossing a classified stream without a permit and causing water quality violations, Respondents are in violation of regulations at 6 NYCRR 608.2 (a) and ECL 17-1501(1) respectively.

Civil Penalty

9. ECL Section 71-1127(1) provides for a penalty of up to two thousand five hundred dollars (\$2,500) for each violation of regulations at 6 NYCRR 608.2 and five hundred dollars (\$500) per day for continuing violations.

Waiver of Hearing

10. Respondents have affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

In respect of the aforesaid violations, a civil penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) of which ONE THOUSAND DOLLARS (\$1,000) shall be paid by money order, or check made payable to the order of "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check. The check shall be sent to:

**The Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway
10th Floor
Albany, NY 12233-4900**

In the alternative, payment of the civil penalty can be made by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line>

The balance FIVE HUNDRED DOLLARS (\$500) shall be suspended so long as Respondents shall comply with the Schedule of Compliance.

The penalty assessed in the Order on Consent constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order on Consent, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset by the penalty amount any tax refund or other monies that may be owed to you by the State of New York. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

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

In the event that Respondents 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 Respondents without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondents.

The signed and notarized Order on Consent shall be sent to:

**New York State Department of Environmental Conservation
Region 4 Main Office
1130 North Westcott Road
Schenectady, NY 12306-2014
ATTN: Karen S. Lavery, Esq.**

II. Communications

All communications or submissions required herein shall be made to: Department -- DEC Region 4, 65561 State Highway 10, Suite 1, Stamford, NY 12167-9503, Attention- Trevor Brady, Biologist 1, trevor.brady@dec.ny.gov. All communications shall include a reference to the Order on Consent Case Number R4-2019-0408-23.

III. Schedule of Compliance

Respondents shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent.

IV. Access

Respondents shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary for DEC to inspect and determine the status of Respondents' compliance with this Order or the ECL.

V. Summary Abatement

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.

VI. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondents, their directors, officers, employees, servants, agents, successors or assigns.

VII. Review of Submittals

1. All documents which Respondents must submit pursuant to this Order are subject to Department approval.
2. The Department shall review each of the submittals Respondents make pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondents in writing of its approval or disapproval of the submittal. All Department- approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondents shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondents shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondents accept such modifications as may be specified by Department to make it approvable. If Respondents do not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondents shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondents shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondents and their successors (including successors in title) and assigns.

IX. Modifications and Extensions

No modifications or extensions of this Order shall be made or become effective except as may be specifically set forth in writing by the Department.

X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondents concerning resolution of the violations identified herein.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Reservation of Rights

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 Respondents 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 Respondents, their officers, directors, agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondents and/or any of Respondents' directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

XIII. Respondents' 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 Respondents waive 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 Respondents.

IX. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondents, their trustees, officers, employees, successors and assigns for the above-referenced violations."

X. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondents' compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

XI. The Order on Consent will terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

DATED: May 6 2019
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent, **Hank Decker and Son Logging**, hereby consents to the issuing and entering of this Order on Consent and waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Kurt Decker

TITLE: owner

DATE: 4-27-19

STATE OF NEW YORK)
 ss:
COUNTY OF Chenango

On the 27 day of April in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared Kurt Decker 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument.

Jennifer G. Cower

Notary Public
Qualified in the County of: Broome
My Commission Expires: 12/13/20

JENNIFER G. COWER # 01C06120058
Notary Public, State of New York
Qualified in Broome County
Commission Expires December 13, 2020

Schedule of Compliance

1. Within **15 days** of the effective date of this Order:
 - a. Erosion and sediment control (silt fencing) shall be installed on the stream bank where areas of bare soil are present;
 - b. All stream channel crossing structures shall be removed;
 - c. Site Grading and Seeding – All areas of soil disturbance resulting from this project shall be shaped and/or graded, seeded and covered with straw or other pre-approved weed-free mulch. The mulching material shall be maintained until at least 80% vegetative cover is established; and
 - d. Within seven (7) days of the plan completion, Respondent shall notify the Department to arrange for a site inspection.
2. Earthmoving and disturbance activity in the stream shall cease except as specifically provided for in the Schedule of Compliance.
3. Prior to fill removal, silt fencing shall be installed along any areas of disturbance to prevent turbid water from entering the stream and wetland. These erosion control measures shall remain in place until the area is re-vegetated. They shall be removed once vegetation cover is at least 80%.
4. Equipment operation in the active channel is prohibited.
5. There shall be no discharge of sediment or turbid waters to any wetlands or waterbodies. In the case of stream work, the water below the work area shall remain as clear as the flowing water above the work site.
6. Disturbance to the bed and banks of the stream shall be kept to the minimum necessary to complete the project. Any exposed soil shall be shaped, seeded, and mulched upon completion of the project.