

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 15, Article 17 and Title 6
of the Official Compilation of Codes,
Rules and Regulations of the State of
New York ("6 NYCRR")

ORDER ON CONSENT

- by -

File No. R4-2008-1216-176

Delaware County Department of Public Works
P.O. Box 311
Page Avenue
Delhi, NY 13753

Respondent

WHEREAS:

1. Respondent, Delaware County Department of Public Works, has a mailing address of P.O. Box 311, Page Avenue, Delhi, New York.
2. Respondent is a person as defined at 6 NYCRR 608.1(n).
3. 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 pursuant to section 17-301."
4. Respondent was issued an Article 15 permit (DEC# 4-1240-00031/00003) ("permit"), effective August 13, 2008, to conduct work on the left bank of the West Branch of the Delaware River just above the CR 18 bridge in South Kortright, New York ("site").
5. Special condition #9 in Respondent's permit states that there shall be no discharge of sediment or turbid waters to waterbodies and that the water below the work area shall remain as clear as the flowing waters above the work site.
6. On September 24, 2008, Department staff observed Respondent working at the site and that there was a significant turbid discharge in the West Branch of the Delaware River coming from the site. Respondent had not properly maintained pollution controls at the site.
7. The turbidity that resulted in the West Branch of the Delaware River from Respondent's work at the site is a violation of permit special condition #9 and ECL 17-0501.

8. Respondent has 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:

I. In respect of the aforesaid violations, a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) is hereby assessed against the Respondent. Payment 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 certified or bank check made payable to the NYS DEC.

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

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

VIII. 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, their agents, their servants, their employees, their successors and their 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.

IX. 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.

X. 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
Delaware County Department of Public Works

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

SIGNED: _____

TITLE: _____

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. Within 60 days of the effective date of this Order, Respondent shall contract with a professional consultant approved by the Department to conduct an educational training forum for its employees who are responsible for overseeing stream work, and bridge and culvert replacement and repair and town highway superintendents in Delaware County, and their deputies, addressing the proper methods of performing stream work. The consultant must be an expert in erosion and sediment control.
2. By April 30, 2009, the training forum must be completed by a Department approved consultant. Documentation that the training was conducted must be submitted to the Department within 10 days of the completion of the training.