

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
7016 0340 0000 4616 5768

October 11, 2017

Mr. Scott P. Edvabsky
85 Barnyard Lane
Levittown, NY 11756

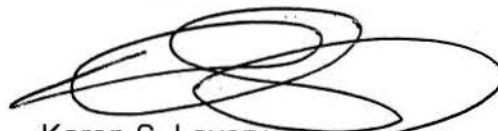
Re: Order on Consent
R4-2017-0822-238

Dear Mr. Edvabsky:

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,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: M. Vencak, ECO



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT
R4-2017-0822-238

Scott P. Edvabsky
85 Barnyard Lane
Levittown, NY 11756

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department") is the State Agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law ("ECL"). In particular, DEC regulates and controls the water resources of the state pursuant to ECL § 15-0101 *et seq* and the rules and regulations promulgated, in part, under regulations at 6 NYCRR Part 608.
2. Respondent is a person as defined at regulations at 6 NYCRR 608.1(y).
3. Respondent owns property located on Fox Creek Road, Rensselaerville, New York which abuts the Fox Creek Stream, which is classified as a C(ts) stream ("site").

Facts

4. Regulations at 6 NYCRR 608.1(p) defines 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).*"

Violation

5. Regulations at 6 NYCRR 608.1(a) and (b) defines 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.

6. On August 17, 2017, Department staff inspected the site including the bed and banks of the Fox Creek Stream and observed that the beds and banks had been disturbed.

7. Respondent admitted to cutting two trees on the banks of the stream and using his bulldozer in the stream.

8. 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."*

9. Respondent's disturbance of the stream, bed and banks without a permit, is a violation of regulations at 6 NYCRR 608.2(a).

10. Pursuant to ECL Section 71-1127(1), *"Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 except section 15-1713, or who violates or who fails to comply with any rule, regulation, determination or order of the department heretofore or hereafter promulgated pursuant to article 15 except section 15-1713, or any condition of a permit issued pursuant to article 15 of this chapter, or any determination or order of the former water resources commission or the Department of Environmental Conservation heretofore promulgated pursuant to former article 5 of the Conservation Law, shall be liable for a civil penalty of not more than five hundred dollars for such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation as otherwise provided in article 15 except section 15-1713."*

11. In settlement of Respondent's civil liability for the aforesaid violations, Respondent has waived his right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on Consent ("Order") pursuant to the provisions of Articles 19, 27 and 71 of the ECL, and has agreed to be bound by the provisions, terms and conditions herein.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

I. PENALTY


Respondent is hereby assessed a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for the violations stated herein. The civil penalty is payable with the return of the signed and notarized Order by bank or certified check or money order made out to the Department of Environmental Conservation.

II. STANDARD PROVISIONS

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: 10/11, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

By  _____

Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives his right to a hearing herein, and agree(s) to be bound by the terms, conditions and provisions contained in this Order.

Scott P. Edvabsky

By (Signature): Scott Edvabsky

Date: 9.22.17

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF Nassau) ss:

On the 22 day of Sept in the year 2017 before me personally came to me known, who, being by me duly sworn, did depose and say that s/he; resides in _____ that s/he is the _____ of _____ the corporation described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporation.

On the 22nd day of September in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Scott Edvabsky 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.

[Signature]

Notary Public
Signature and Office of individual taking acknowledgment

MARYANNE RUSSO
Notary Public, State of New York
No. 01RU5066001 Nassau
Qualified in Suffolk County
Commission Expires November 1, 20
Feb. 1, 2019

STANDARD PROVISIONS

Payment Any penalty assessed pursuant to the terms and conditions of this Order shall be paid with the return of the signed and notarized Order on Consent and by certified or cashier's check or money order, payable to the Department of Environmental Conservation, to:

Department of Environmental Conservation
Region 4, Attn: Karen Lavery
1130 North Westcott Drive
Schenectady, NY 12306

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

Department of Environmental Conservation
Region 4, Attn: Mary Barrie
Regional Enforcement Coordinator
1150 North Westcott Drive
Schenectady, NY 12306

Effective Date and Duration The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

Access For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or his employees, servants, agents, successors or assigns.

Modifications No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Settlement and Reservation of Rights

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and his successors (including successors in title) and assigns.

B. Except as provided in paragraph B.A above, 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 the Commissioner's 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.

Entire Agreement This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.