

**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**

7015 0640 0000 2327 0230

October 5, 2015

Mr. Fran Enjem  
7808 State Highway 28  
Richfield, NY 13439

**CERTIFIED - RETURN RECEIPT REQUESTED**

7015 0640 0000 2327 0247

Ms. Bonita Enjem  
7808 State Highway 28  
Richfield, NY 13439

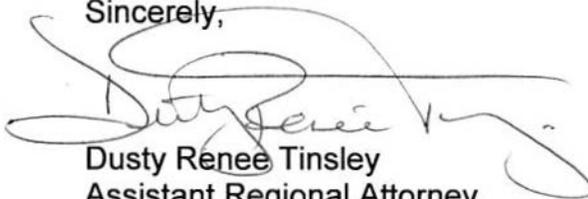
Re: Order of Consent  
R4-2015-0803-92  
Permit # 4-3656-00046-00005

Dear Mr. & Ms. Enjem:

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

This will also acknowledge receipt of \$1,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: T. Swenson

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Violations  
of Article 24 of the New York State  
Environmental Conservation Law,  
and Title 6 Part 663.4  
of the Official Compilation of  
Codes, Rules and Regulations  
of the State of New York,

-by-

**Order on Consent**

File No. R4-2015-0803-92  
Permit # 4-3656-00046/00005

Fran Enjem and  
Bonita Enjem,

Respondents.

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**WHEREAS:**

1. The Department of Environmental Conservation ("Department" or "DEC") is a department of the State of New York which, pursuant to Article 24 of the Environmental Conservation Law ("ECL"), is authorized to preserve, protect, and conserve freshwater wetlands and the benefits derived therefrom. In particular, DEC regulates and controls the water resources of the state pursuant to ECL Article 24 and the rules and regulations promulgated, in part, under 6 New York Code of Rules and Regulations ("6 NYCRR") Part 663.4.
2. Respondents Fran Enjem and Bonita Enjem own a parcel of land located at 7808 State Highway 28, Richfield Springs, New York, 13499 ("Site") on which contains freshwater wetlands designated as SY-6 adjacent to Canadarago Lake ("Wetland").
3. 6 NYCRR Part 663.2 (w) defines a "person" to mean "any corporation, firm, partnership, association, trust, estate, one or more individuals, or any unit of state or local government or any agency or subdivision thereof, including any state department, bureau, commission, board, or other agency; public authority, or public benefit corporation." Respondents are persons as defined at 6 NYCRR Part 663.2 (w).
4. 6 NYCRR Part 663.4(20) states that a permit is required for "[f]illing, including filling for agricultural purposes" and that this type of activity "is incompatible with a wetland and

its functions and benefits.”

5. The Department issued Respondents a permit, # 4-3656-00046/00005, dated December 2, 2004, to construct a residence and a dock at the Site (“Permit”).

6. The Permit states that “All work shall be done in accordance with the approved plans, dated 11/26/03 and revised 3/24/04, and prepared by Johannes deWaal. Any modifications to these plans that will affect the indicated waterbody, wetland or adjacent area must be approved by the Department prior to being undertaken. Work and ground or waterway/wetland disturbance is strictly limited to the areas approved by this permit and shown on the approved plans.”

7. The Permit, through the approved plans referenced therein, authorized a 50 foot setback from the lakeshore of the residence at the Site.

8. On July 14, 2015, Department staff visited the Site and observed that portions of the residence had been constructed within 35 feet of the lakeshore.

9. Respondents construction of the residence within 50 feet of the lakeshore is a violation of the Permit authorizing a 50 foot setback from the lakeshore.

10. The Permit, through the approved plans referenced therein, provide that the property at the Site between the residence and the lakeshore was to remain at existing grade.

11. On July 14, 2015, Department staff visited the Site and observed that fill was deposited between the residence and the lakeshore.

12. Respondents placement of fill between the residence and the lakeshore is a violation of the Permit requiring that the property between the residence and the lakeshore remain at existing grade.

13. ECL Section 71-2303(1) provides that a 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 this state for a civil penalty not to exceed \$11,000 and the restoration of the affected freshwater wetland to its condition prior to the violation.

14. Respondents affirmatively waived their right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. In respect to the Order's violations, a civil penalty for ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) is assessed against the Respondents for the above violations. ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order. Respondents are individually and jointly liable for payment of this civil penalty.

II. 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.

III. This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

V. 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 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.

VI. Respondent shall allow duly authorized representatives of the Department 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, Department regulations, and/or the ECL and applicable federal regulations.

VII. The effective date of this Order shall be the date upon which it is signed on behalf of 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone

other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

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

E. 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. Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

X. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advise, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

XI. This Order settles all violations identified herein as of the effective date of the Order.

XII. This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

XIII. Communications to the Department shall be sent to

Office of General Counsel  
New York State Department of Environmental Conservation - Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

Communications to Respondent shall be sent to:

Fran Enjem  
7808 State Highway 28  
Richfield Springs, NY 13439

and

Bonita Enjem  
7808 State Highway 28  
Richfield Springs, NY 13439

XIV. This Order settles all violations set forth in the September 1, 2015 Complaint upon payment of the civil penalty and compliance with the Schedule of Compliance. The Notice of Hearing and Complaint in this matter shall be withdrawn as of the effective date of this Order.

DATED: October 5, 2015  
Rotterdam, New York

Marc Gerstman  
Acting Commissioner  
New York State Department of Environmental  
Conservation

BY:

A handwritten signature in black ink, appearing to read "Keith Goertz", is written over a horizontal line.

Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT FRAN ENJEM

Respondent Fran Enjem hereby consents to the issuance and entry of the foregoing Order, waives his rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Fran Enjem (signature): 

Date: 9/22/2015

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

On the 22<sup>nd</sup> day of September in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared FRAN ENJEM, 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 the which the individual acted, executed the instrument.



Notary Public

Qualified in the County of:

My commission expires: 11/31/19

GUSTAVE J. DE TRAGLIA, JR.  
Notary Public, State of New York  
Reg. No. 02DE4527463  
Appointed in Oneida County  
My Commission Expires 1/31/20 19

CONSENT BY RESPONDENT BONITA ENJEM

Respondent Bonita Enjem hereby consents to the issuance and entry of the foregoing Order, waives her rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Bonita Enjem (signature): Bonita Enjem

Date: 9/22/2015

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

On the 22<sup>d</sup> day of September in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared BONITA ENJEM, 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 the which the individual acted, executed the instrument.

Gustavo J. De Traglia Jr  
Notary Public  
Qualified in the County of:  
My commission expires: 1/31/19

GUSTAVE J. DE TRAGLIA, JR.  
Notary Public, State of New York  
Reg. No. 2DE4527463  
Appointed in Oneida County 19  
My Commission Expires 1/31/20 19

## **SCHEDULE OF COMPLIANCE**

1. Respondents shall, effective immediately, allow the area within ten feet of the shoreline, for the length of the property owned by Fran and/or Bonita Enjem, to remain in its natural state (Designated Area"). Respondents shall not interfere with the natural growth in the Designated Area, including but not limited to mowing, trimming, weeding, removing, spraying with any chemical, pesticide, fertilizer, etc., or otherwise altering the natural growth.
2. Respondents shall sign the attached Compliance Verification Forms and submit them to the Department within 10 days of the effective date of this Order.

COMPLIANCE VERIFICATION AFFIDAVIT

ORDER ON CONSENT

R4-2015-0722-91

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations  
of Article 24 of the New York State  
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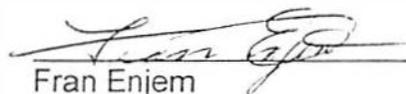
File No. R4-2015-0803-92  
Permit # 4-3656-00046/00005

Fran Enjem and  
Bonita Enjem,

Respondents.

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I, Fran Enjem, being duly sworn, do depose and say that I affirm that, on property I own with Bonita Enjem located at State Highway 28, Richfield Springs, New York 13499, I shall allow the area within ten feet of the shoreline, for the length of the property, to remain in its natural state (Designated Area"). I shall not, effective immediately, interfere with the natural growth in the Designated Area, including but not limited to mowing, trimming, weeding, removing, spraying with any chemical, pesticide, fertilizer, etc., or otherwise altering the natural growth.

  
\_\_\_\_\_  
Fran Enjem

9/22/2015  
\_\_\_\_\_  
Date Signed

**COMPLIANCE VERIFICATION AFFIDAVIT**

**ORDER ON CONSENT**

R4-2015-0722-91

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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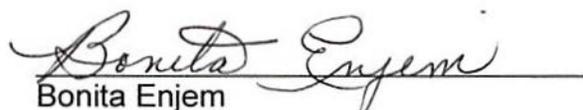
File No. R4-2015-0803-92  
Permit # 4-3656-00046/00005

Fran Enjem and  
Bonita Enjem,

Respondents.

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I, Bonita Enjem, being duly sworn, do depose and say that I affirm that, on property I own with Fran Enjem located at State Highway 28, Richfield Springs, New York 13499, I shall allow the area within ten feet of the shoreline, for the length of the property, to remain in its natural state (Designated Area"). I shall not, effective immediately, interfere with the natural growth in the Designated Area, including but not limited to mowing, trimming, weeding, removing, spraying with any chemical, pesticide, fertilizer, etc., or otherwise altering the natural growth.

  
Bonita Enjem  
