

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 3663

March 9, 2015

Fred Edwards
3050 Route 23A
Palenville, NY 12463

Re: Order on Consent
R4-2013-0912-114

Dear Mr. Edwards:

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

This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: Lt. K. Beiter
L. Bifaro
M. Ellis

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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”)

ORDER ON CONSENT
File No. R4-2013-0912-114

-by-

Fred Edwards
3050 Route 23A
Palenville, NY 12463

Respondent

WHEREAS:

1. The Department of Environmental Conservation (“DEC” or “the Department”) has jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.
2. The Department is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, *inter alia*, ECL § 3-0301. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities pursuant to Article 27 of the New York State Environmental Conservation Law (ECL).
3. Respondent, Fred Edwards, owns property in and within a freshwater wetland (K-8) located at 2869 Route 23A, Palenville, New York (“the wetland”).
4. On August 19, 2013, Department staff inspected the site and observed that Respondent had dumped fill consisting primarily of dirt, brick, cinder block, asphalt, concrete, wood chips and stone, over the slope down to and into the wetland
5. Regulations at 6 NYCRR 663.4(d)(20) prohibits the filling of a wetland and its adjacent area.
6. Respondent’s placement of fill in the wetland is a violation of regulations at 6 NYCRR 663.4(d)(20)

7. ECL § 71-2303 (1) provides for up to \$11,000 in civil penalties for each violation of a regulation and the restoration of the affected freshwater wetland to its condition prior to the violation.

8. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein. Respondent admits to the violations set forth herein.

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

I. In respect of the aforesaid alleged violations, a civil penalty in the amount of ELEVEN THOUSAND DOLLARS (\$11,000) of which TWO THOUSAND DOLLARS (\$2,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance NINE THOUSAND DOLLARS (\$9,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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

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

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

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, his 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. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Supervisor of Natural Resources
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

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

X. 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, his agents, his servants, his employees, his successors and his 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.

XI. 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 Respondents 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.

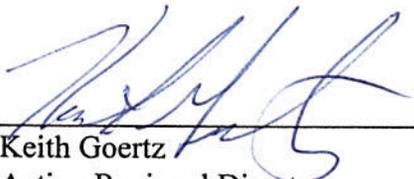
If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: *March 9*, 2015
Rotterdam, New York

Joe Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Acting Regional Director
Region 4

CONSENT BY RESPONDENT

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

Fred Edwards

SIGNED: Fred Edwards III

TITLE: owner

DATE: March 5, 2015

STATE OF New York

COUNTY OF Ulster) ss.:
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On the 5 day of March in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Fred Edwards III 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.

Deborah Oper

Notary Public

Qualified in the County of: Greene

My Commission Expires:



SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall cease all filling in the wetland and adjacent area except that required for restoration efforts.
2. By June 15, 2015, fill material must be graded back to create a stable slope away from the wetland boundary to reestablish a functioning wetland buffer along the entire affected adjacent area. The finalized slope must be more gradual than a 2.5 Horizontal to 1 Vertical slope. An erosion control barrier shall be established along the base of the entire slope within the wetland adjacent area, such as a silt fence, during the restoration of the site and maintained until the site is stabilized. All removed material must be placed in an upland location outside of the wetland or moved offsite.
3. Once the new stable slopes have been created, all areas within 100 feet of the wetland boundary shall be covered with at least 6 inches of topsoil, seeded with a local blend conservation mix and mulched by June 30, 2015. On site processed compost may be utilized in restoration efforts.
4. Areas within 100 feet of the wetland boundary shall be allowed to revert back to natural vegetation and shall remain undisturbed and in a natural state.
5. Respondent must ensure that compost leachate does not enter the wetlands and all stormwater is managed on site.