

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

September 20, 2018

7017 1070 0001 0125 8947
Mr. Scott R. Kurkoski
Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, New York 13850

7017 1070 0001 0125 8954
Mr. Daniel Roop
Ravi Engineering & Land Surveying
2110 S. Clinton Ave., Suite #1
Rochester, New York 14618

Re: Order on Consent
R4-2017-1003-250
Gorick Construction Co. Inc
and
Ravi Engineering & Land Surveying, P.C.

Dear Messrs. Kurkoski and Roop:

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

This will also acknowledge receipt of the \$9,572 civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Rider
C. VanMaaren
S. Swenson

**STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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

-by-

ORDER ON CONSENT
R4-2017-1003-250

Gorick Construction Co. Inc.
27 Track Drive
Binghamton, NY 13904-2718

Ravi Engineering & Land Surveying
2110 S. Clinton Ave., Suite #1
Rochester, New York 14618,

Respondents.

WHEREAS:

1. The New York State Department of Environmental Conservation ("Department") is and has been a Department of the State of New York charged with administration of the State Pollutant Discharge Elimination System ("SPDES"), pursuant to Article 17, Title 8 of the Environmental Conservation Law ("ECL") Parts 750-757, Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").
2. Respondent, Gorick Construction Co. Inc. ("Gorick"), is a domestic business corporation that was contracted by New York Department of Transportation ("NYSDOT") to construct a culvert for Crystal Brook under Interstate Highway 86. A water quality certification ("WQC") was issued to DOT that required that the stream flow be diverted using a dam and pump method and this requirement was also contained in the contract between DOT and Respondent.
3. Respondent, Ravi Engineering & Land Surveying, P.C. ("Ravi"), is a domestic professional corporation that was contracted by NYSDOT to provide construction inspection services to the project.
4. On June 16, 2017, NYSDOT staff inspected the culvert work and found that Respondents had diverted Crystal Brook outside of its banks to a drainage swale, thereby drying up approximately 1,095 feet of the stream down gradient of the culvert work site.
5. Crystal Brook is classified as a C(ts) stream pursuant to 6 NYCRR §§ 701.8 and 701.25(b), meaning its best usage includes that of fishing and trout spawning.
6. Regulations at 6 NYCRR § 703.2 contain "narrative water quality standards" for *flow* in Class C streams. The *flow* narrative water quality standard is "No alteration that will impair the waters for their best usages."

7. Respondents violated 6 NYCRR § 703.2 by altering the flow of the Crystal Brook and drying it up, causing a fish kill. The natural resources damages associated with this event have been calculated to be approximately \$65,428.

8. ECL § 71-1929(1) provides that: “A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

9. Respondents have affirmatively waived their respective rights to a hearing as provided by law and have consented to the issuing of this Order and have agreed to be bound by the provisions, terms and the conditions of this Order.

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

I. **Civil Penalty.** Respondent Ravi is hereby assessed a civil penalty in the amount of NINE THOUSAND, FIVE HUNDRED SEVENTY-TWO DOLLARS (\$9,572), which amount is due to the Department with the return of the signed and notarized Order. The civil penalty shall be paid by bank/cashier’s check or money order made payable to the NYS Department of Environmental Conservation.

II. **Environmental Benefit Project.** Respondent Gorick agrees to fund, in the amount of SIXTY-FIVE THOUSAND, FOUR HUNDRED TWENTY-EIGHT DOLLARS (\$65,428) an Environmental Benefit Project (“EBP”) as follows:

1. Per the terms of Item #1 of the Schedule of Compliance attached to and made part of this Order, Respondent Gorick shall submit, for approval by the Department, a written plan to construct a series of boulder clusters in the East Branch of the Delaware River, intended to improve aquatic habitat, enhance fishing access, and overall aesthetic value. Respondent Gorick shall adhere to the plan’s construction schedule following approval.
2. Prior to project completion, Respondent Gorick shall restore all sites to pre-construction condition, including seeding and mulching of all affected soil.
3. Within thirty (30) days of completion of the EBP, Respondent Gorick must complete and submit to the Department an affidavit of completion, as set forth in Attachment A to this Order, together with an accounting of costs.

A. Any statements, whether oral or written, that Respondent Gorick (or a third party at the request of the Respondents) make with respect to the EBP will include language stating that the project was undertaken as part of the resolution of an enforcement matter brought by the Department for applicable violation(s). Respondent Gorick shall not use the cost of the EBP to reduce its tax liability.

B. The Department shall be the sole judge of whether Respondent Gorick has complied with the terms of this Order as it relates to satisfactory implementation of any EBP(s).

C. The EBP provision of this Order does not create any substantive or procedural right that is enforceable by a third party.

III. **Settlement.** Timely payment of the civil penalty and the implementation of the approved EBP will be considered full compliance with the terms and conditions of this Order, and is accepted as full settlement of the violations described above.

IV. **Communications.** All communications required herein shall be made to:

For the Department:

DEC Region 4
1130 North Westcott Road,
Schenectady, NY 12306,
Attn: Natural Resources Supervisor

For Respondent Gorick:

Gorick Construction Co., Inc.
Attn: Al Gorick
27 Track Drive
Binghamton, NY 13904-2718

For Respondent Ravi:

Ravi Engineering & Land Surveying, P.C.
Attn: Dan Roop
2110 S. Clinton Ave., Suite #1
Rochester, New York 14618.

V. **Indemnification.** Respondents shall indemnify and hold the Department, 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.

VI. **Entire Agreement.** This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified, except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating intent to modify this Order.

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

VIII. **Termination Date.** This Order shall terminate upon the Department's determination that Respondents have complied with all the terms, conditions and terms of the Order.

DATED: Sept. 19, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director

CONSENT BY RESPONDENT

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

Ravi Engineering & Land Surveying, P.C.
Authorized Representative

SIGNED: N. R. Ravindra

TITLE: PRESIDENT

PRINTED: NAGAPPA RAVINDRA

DATE: 9/14/18

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

On the 14 day of September in the year 2018, before me, the undersigned, personally appeared Nagappa Ravindra, personally known *(Full name)*

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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

LAURA G. MURRAY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MU6254798
Qualified in Monroe County
My Commission Expires January 23, 2020

Laura G. Murray
Notary Public
Qualified in the County of:
My Commission Expires:

CONSENT BY RESPONDENT

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

Gorick Construction Co., Inc.
Authorized Representative

SIGNED: Alfred Gorick Jr

TITLE: PRESIDENT

PRINTED: Alfred Gorick Jr

DATE: 9/14/18

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

On the 14 day of Sept in the year 2018, before me, the undersigned, personally appeared ALFRED GORICK JR, personally known (Full name) 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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sherry Cook
Notary Public
Qualified in the County of: BROOME
My Commission Expires: 8-13-22

SHERRY COOK
Notary Public State of new York
Residing in Broome County
My Commission Expires Aug. 13, 22

SCHEDULE OF COMPLIANCE

1. **Within thirty (30) days of the effective date of this Order**, Respondent Gorick shall submit for approval by the Department a written plan to implement the EBP described in the Order, intended to improve aquatic habitat, enhance fishing access, and overall aesthetic value. The plan shall include a timeline with milestones for completion of the project by September 30, 2019. The plan shall also include:
 - a. Approximate size of each boulder cluster;
 - b. Approximate size of boulders comprising each cluster;
 - c. Approximate number of boulders comprising each cluster;
 - d. Composition of materials comprising each cluster;
 - e. Location of boulders within the Crystal Brook watershed.

2. **By June 15, 2019**, Respondent Gorick shall commence work on the EBP and provide written notice to the Department that work has commenced.
 - a. **By July 15, 2019**, Respondent Gorick shall provide the Department with a status report on work completed to date, and work remaining.

3. All work shall be completed by September 30, 2019.