

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4  
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CERTIFIED - RETURN RECEIPT REQUESTED  
7016 0340 0000 4616 6345

January 29, 2018

George Frangiadakis  
2754 Soper Avenue  
Baldwin, NY 11510

Re: Order on Consent  
R4-2017-1208-286

Dear Mr. Frangiadakis:

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,



Stephen Repsher  
Assistant Regional Attorney  
Region 4

Enclosure

ec: T. Swenson



Department of  
Environmental  
Conservation

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

In the Matter of Violations of the Environmental 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"),

-by-

**ORDER ON CONSENT**  
R4-2017-1208-286

George Frangiadakis  
2754 Soper Avenue  
Baldwin, NY 11510,

Respondent.

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**WHEREAS:**

**Jurisdiction**

1. The New York State Department of Environmental Conservation ("Department") is a department of the State of New York which is authorized to preserve, protect, and conserve freshwater wetlands and the benefits derived therefrom under the Environmental Conservation Law ("ECL"). Specifically, the Department regulates and controls the water resources of the state pursuant to ECL Article 24, and the rules and regulations promulgated, in part, under Title 6 of the New York Code of Rules and Regulations ("6 NYCRR"), Parts 663 and 608.

**Respondent**

2. Respondent, George Frangiadakis, owns a parcel of property located at Willowbrook Road in Greenville, New York, and identified as Greene County Tax Parcel 26.00-2-31 ("Site").

3. A portion of the Site owned by Respondent is classified as a protected freshwater wetland, identified by the Department as New York State Regulated Freshwater Wetland AC-113.

4. The Site also contains a portion of a stream (identified and mapped as Stream H-193-9-2) which has been designated as Class 'C' pursuant to 6 NYCRR § 701.8.

5. Respondent is a person as defined at 6 NYCRR Part 663.2(w).

## VIOLATIONS

6. On or about June 20, 2017, Department staff observed that Respondent had constructed a crossing at the Site over a Class C stream and within New York Regulated Freshwater Wetland AC-113, which effectively dammed and impounded water upstream of said crossing during seasonal high water events.
7. Based on these observations, Department staff issued a Notice of Violation (“NOV”) and Schedule of Compliance (“SOC”) dated June 20, 2017, which set forth actions Respondent was required to take to remediate the violations.
8. The June 20, 2017 NOV/SOC set a deadline for compliance at August 31, 2017.
9. On August 24, 2017, Department staff met with Respondent at the Site to confirm and clarify the violations and the need and possible methods to remediate them.
10. At Respondent’s request, the deadline for compliance was thereafter extended to September 30, 2017, via the issuance of a second NOV/SOC on August 28, 2017.
11. The deadline for compliance was subsequently extended to October 15, 2017, again at Respondent’s request, via the issuance of a third NOV/SOC on September 7, 2017.
12. To Department staff’s knowledge, Respondent has taken no action to date to remediate the Site and bring it into compliance.
13. Regulation 6 NYCRR 663.4(d) sets forth various activities for which a permit is required in regulated freshwater wetland areas prior to engaging in those activities. With specific regard to activities conducted by Respondent, a permit is required for:
  - a) “Draining and altering water levels, except as part of an agricultural activity.” (6 NYCRR 663.4(d) at Item 17);
  - b) “Filling, including filling for agricultural purposes” (6 NYCRR 663.4(d) at Item 20); and
  - c) “Grading, and dredging not included in item 26” (i.e., dredging “to maintain present navigation channels”); (6 NYCRR 663.4(d) at Item 25).
14. Respondent violated 6 NYCRR 663.4(d), Item 17 by altering water levels for a non-agricultural purpose in a freshwater wetland.
15. Respondent violated 6 NYCRR 663.4(d), Item 20 by filling in a freshwater wetland area.
16. Respondent violated 6 NYCRR 663.4(d), Item 25 by grading soil in a freshwater wetland area.

17. Furthermore, ECL §24-0701(1) provides in relevant part that “any person desiring to conduct on freshwater wetlands as so designated thereon any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title.”

18. ECL §24-0701(2), in turn, identifies said regulated activities as including:

any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom.

19. Respondent violated ECL §24-0701(1) by altering freshwater wetland without a permit.

#### **Civil Penalty**

20. ECL § 71-2303(1) provides that any 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 the state for a civil penalty not to exceed \$11,000 for every such violation, and may be required to restore the affected freshwater wetland to its condition prior to the violation.

#### **Waiver of Hearing**

21. Respondent has affirmatively waived its right to a hearing as provided by law, and has consented to the issuance of this Order, and has 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 is hereby assessed a civil penalty in the amount of ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500). 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 money order, company check, or bank check, made payable to the NYS Department of Environmental Conservation.

II. **Binding Effect.** The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or controlled by it.

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

For the Department:

Theresa Swenson  
Division of Fish, Wildlife and Marine Resources  
NYS Department of Environmental Conservation  
Region 4  
65561 State Hwy. 10, Suite 1,  
Stamford, NY 12167-9503

For the Respondent:

George Frangiadakis  
2754 Soper Avenue  
Baldwin, NY 11510

IV. **Summary Abatement.** 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.

V. **Indemnification.** 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, its directors, officers, employees, servants, agents, successors or assigns, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

VI. **Modification.** 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, such change to be made only upon written agreement of the parties.

VII. **Effective Date.** This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

VIII. **Scope.** 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 Department or State may have against Respondent for any other violations of the ECL, rules or regulations promulgated 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, its agents, its servants, its employees, its successors and its assigns; and

C. 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. **Review of Submitted Documentation.** 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order 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 submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

X. **Access.** To ensure compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable

times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.


XI. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

XII. **Termination.** The Order shall terminate upon Respondent's complete compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: January 26, 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.

George Frangiadakis

Signed: 

Date: 1/24/18

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

On the 24<sup>th</sup> day of January in the year 2018, before me, the undersigned,

personally appeared George Frangiadakis, personally known  
(Full name)

to me who, being duly sworn, did depose and say that he resides at:  
2754 Soper Ave. Baldwin, NY 11510  
(Full mailing address)

and who executed the above instrument.



Notary Public  
Qualified in the County of:  
My Commission Expires:

Timothy J. Donohue  
Notary Public, State of New York  
County of Nassau  
No. 01DO6038531  
Commission Expires - Mar 13, 2018

## SCHEDULE OF COMPLIANCE

- **Effective immediately**, all earthmoving, vegetation removal, and disturbance activity in the wetland and corresponding adjacent area shall cease, except as specifically provided for in this Schedule of Compliance.
- **Within thirty (30) days of the effective date of this Order:**
  - 1) Prior to fill removal, erosion control structures such as silt fencing shall be installed along any areas of disturbance to prevent turbid water from entering the stream and wetland. This include the areas surrounding the dam structure constructed and roadway. These erosion control structures shall remain in place until the area is stable and revegetated.
  - 2) The work area shall be isolated from the flowing stream by use of sandbags, cofferdam, or piping or pumping around the work area. Waters accumulated in the isolated work area shall be discharged to an upland settling basin, field or wooded area to provide for settling and filtering of solids and sediments before water is returned to the stream. Return waters must be as clear as the flowing water upstream from the work area, and flow downstream of the work area shall be sustained.
  - 3) All piles of side cast soil/fill onsite shall be immediately removed and disposed of a minimum of 100 feet from any waterbody or wetland or flood plain. These areas shall be allowed to revegetate.
  - 4) Soil removal shall be restricted to the fill material placed in violation (primarily the dam structure and roadway crossing wetland and stream) to restore impacted areas to original contours. Unaffected areas immediately adjacent to the roadway can be used as reference. Excavation/filling beyond restoration to previous condition would require a permit.
  - 5) All areas of soil disturbance within upland areas resulting from this restoration shall be seeded with an appropriate conservation seed mix and mulched with straw (not hay) or another weed-free mulch. Mulch shall be maintained until a suitable vegetative cover is established. Disturbed areas within the wetland proper should be allowed to revegetate naturally.
- If implementation of any of the actions enumerated above cannot be completed within thirty (30) days from the effective date of the Order due to weather/climate conditions, implementation shall begin as soon as practicable thereafter; but in any event, all remediation shall be completed no later than one hundred eighty (180) days following the effective date of this Order.

**NOTE:** Compliance with this Schedule shall not be a defense to subsequent violations.