

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Environmental
Conservation Law Article 15

ORDER ON CONSENT

File No. R4-2007-1214-171

- by -

Keith Jones and Christine Jones
Sunrise Farms, Inc.
200 Cauterskill Road
Catskill, New York 12414

Respondents

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 6 NYCRR Part 608.
2. Respondents, Keith Jones and Christine Jones, reside at 200 Cauterskill Road in the Town of Catskill, Greene County, New York.
3. Sunrise Farms, Inc. owns the property located at NYS Rt 32 just south of Cauterskill Road in the Town of Catskill, Greene County, New York which includes a portion of the Kiskatom Brook ("site").
4. Respondents Keith Jones and Christine Jones directed the bulldozing of the stream and the berming of the banks.
5. Respondents are persons as defined at 6 NYCRR 608.1(n).
6. 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)."
7. 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.

(b) Bed means that land area of a watercourse covered by water at mean high water.

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. Tributary (H-193-2-18) is a tributary to the Hudson River and a Class C(ts) stream ("tributary").

Violations of Permit and ECL Article 15

10. On October 19, 2007, Department staff inspected the tributary and observed that the stream had been overwidened and the banks had been bermed.

11. The widening of the stream and the berming of the banks are violations of the regulations at 6 NYCRR 608.2(a).

12. The Respondents had not obtained a permit prior to disturbing the stream or the adjacent banks.

13. Respondents have affirmatively waived their 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.

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

I. With respect to the aforesaid alleged violation, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) is hereby assessed against the Respondent of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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 (\$2,500) 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 Respondents without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondents. Respondents will have thirty days from the date of the notice to cure the violation(s).

II. Respondents shall not conduct or cause to be conducted any activities in the tributary unless pursuant to either an ECL Article 15 permit for the activity or in accordance with the requirements in the Schedule of Compliance.

III. Respondents shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

IV. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

V. This Order is binding upon the Respondents, their agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

VI. All communications to the Department except where otherwise specifically directed should be sent to:

Jerry Fraine
Regional Fisheries Office
New York State Department of Environmental Conservation
Region 4 - Stamford Office
65561 State Highway 10, Suite 1
Stamford, New York 12167-9503
607-652-2645

VII. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VIII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question, on reasonable notice to Respondents, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

IX. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. 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 its successors (including successors in title) and assigns.

XI. 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 Respondents for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder other than the actions and transactions asserted herein;

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 Respondents, their agents, servants, employees, successors and assigns;

C. Respondents' 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 Respondents waive 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 Respondents.

XII. Respondents 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, their employees, servants, agents, successors or assigns.

XIII. This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

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

DATED: 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Keith Jones

DATE : _____

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

On the ____ day of _____ in the year 200 , before me, the undersigned, personally appeared _____, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

CONSENT BY RESPONDENT

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

Christine Jones

DATE : _____

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

On the ____ day of _____ in the year 200_, before me, the undersigned, personally appeared _____, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

CONSENT BY RESPONDENT

Sunrise Farms, Inc.

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

BY: _____ TITLE: _____

DATE: _____

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

On the ____ day of _____ in the year 200__, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____,
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York

SCHEDULE OF COMPLIANCE

1. Respondents have submitted a restoration plan which was prepared by a qualified professional. This plan was approved by Department staff provided that the plan include the placement of 15 boulder clusters throughout the entire 1,800 ft reach. A boulder cluster consists of 3 boulders placed in close proximity. The pre-disturbance stream morphology and instream habitat shall be re-established for the entire length of stream and the berms will need to be removed.
2. By September 1, 2008, Respondents must implement the approved plan. The Department will not unreasonably deny Respondents' request for an extension of time in which to complete the plan. Within 72 hours of completing the work, Respondents must contact Department representative Jerry Fraine at (607) 652-7366.