

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
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www.dec.ny.gov

**CERTIFIED - RETURN RECEIPT REQUESTED**

7013 1090 0002 3365 3014

May 6, 2016

Richard C. Kaufman  
15014 State Route 30  
P.O. Box 128  
Downsville, NY 13755

Re: Order on Consent  
R4-2016-0229-29

Dear Mr. Kaufman:

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

This will also acknowledge receipt of \$2,844 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: J. Bink, Ranger  
B. Schongar  
M. Callan  
B. Ellis



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation Law  
("ECL") Article 9 and  
Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of  
New York

**ORDER ON CONSENT**  
R4-2016-0229-29

-by-

Richard C. Kaufman  
15014 State Route 30  
P.O. Box 128  
Downsville, NY 13755

Respondent

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WHEREAS:

1. Article 9 of the Environmental Conservation Law grants the New York State Department of Environmental Conservation ("Department") care, custody, and control of the Forest Preserves of the state. Pursuant to that authority, the Department promulgated Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") Parts 190 and 196.
2. On October 19, 2015, Department staff inspected state property located on Campbell Brook Road in the Town of Colchester, New York, Delaware County, Tax Parcel 376/2/8.1 ("site"). At that time, Department staff determined that Respondent had engaged in logging activity which occurred between November of 2014 and September of 2015. Respondent removed eight trees that were located on State property while he was conducting a timber harvest on an adjacent property. The trees that were cut were visible over the painted boundary line between State land and the land on which he was conducting the harvest. Respondent also caused rutting and soil disturbance on State property in four locations where logging equipment was used when removing trees. In addition, tree tops had fallen on state property in two locations as a result of Respondent's timber harvest.

3. ECL § 9-303 provides that:

*“In order to protect the state land described in this article, the following provisions apply:*

*1. Trees or timber. Except as provided in subdivision 2 of section 9-0107 and in sections 9-0501 through 9-0507 of this article, no person shall cut, remove, injure, destroy, or cause to be cut, removed, injured, or destroyed any trees or timber or other property thereon or enter upon such lands with intent to do so.”*

4. Respondent violated ECL § 9-303 by cutting trees located on State land.

5. Department staff has determined the value of the cut trees as follows:

Tree Number	Species	Stump Diameter	Stump Dia inches	Est DBH	Est No of Moroh Logs (8 ft)	Est Vol (bd Ft.)	Est Value
1	wa	1.7	20.4	18.6	4.5	404	\$161.60
2	wa	1.4-1.3	15.6	14.3	4	200	\$ 80.00
3	wa	1.7	20.4	18.6	4.5	404	\$161.60
4	wa	2.4	28.8	26	5	1021	\$408.40
5	wa	1.8	21.6	19.6	6(49 feet)	515	\$206.00
6	hm	2-1.8	22.8	20.3	4(38 feet)	480	\$264.00
7	sm	2-1.8	22.8	21.4	5(43 feet)	579	\$217.13
8	wa	2.3-2.3	27.6	25	5(41 feet)	865	\$346.00
						4468	\$1,844.73

#### Civil Penalty

6. ECL §71-0703 (6)(a) provides that:

*“In addition to any other penalty provided by law, any person who violates subdivision 1 of section 9-0303 of this chapter shall be liable to a civil penalty of two hundred fifty dollars per tree or treble damages, based on the stumpage value of such tree or both. Where the order or decision finds that the defendant established by clear and convincing evidence, that when such defendant committed the violation, he or she had cause to believe that the land was his or her own, or that he or she had an easement or right of way across such land which permitted such action, damages shall be awarded on the basis of the stumpage value of such tree or trees in the market as if they were privately owned. Notwithstanding the foregoing, this section shall not be construed to authorize the cutting of timber or removal of trees where such action would otherwise be violative of any provision of the state constitution or law.*

*(c) For purposes of this subdivision, "stumpage value" shall mean the current fair market value of a tree as it stands prior to the time of sale, cutting, or removal. Stumpage value shall be determined by one or more of the following methods: the sale price of the tree in an arm's-length sale, a review of solicited bids, the stumpage price report prepared by the department of environmental conservation, comparison with like sales on trees on state or private lands, or other appropriate means to assure that a fair market value is established within an acceptable range based on the appropriate geographic area.*

7. *In addition to the penalties otherwise provided, any person who violates any of the provisions of subdivision 1 of section 9-0303 or section 9-1501 of this chapter may be ordered by the commissioner or the court to make reparations for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of a monetary payment to make such restoration."*

#### Waiver of Hearing

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 agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. With respect of the aforesaid alleged violations, a civil penalty in the amount of TWO THOUSAND EIGHT HUNDRED FORTY FOUR DOLLARS (\$2,844) 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.

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

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and its 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.

IV. 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.

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

VI. 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, its agents, its servants, its employees, its successors and its 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 or any other third party, provided, however, that Respondent 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 Respondent.

VII. 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 Paragraph IV of this Order. No informal oral or written advice, 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 obligations to obtain such formal approvals as may be required by this Order.

VIII. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: *May 5*, 2016  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
Keith Goertz  
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.

Richard Kaufman

SIGNED: Richard Kaufman

DATE: 4-27-16

STATE OF New York )

COUNTY OF Delaware ) ss.:

On the 27<sup>th</sup> day of April in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Richard Kaufman 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.

Jean Lacey  
Notary Public

Qualified in the County of:  
My Commission Expires:

Jean Lacey  
Notary Public, State of NY  
No. 01LA6175347  
Qualified in Delaware Co.  
Commission Exp. Oct. 09, 2019