

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

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Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 4785

May 18, 2013

Kim Riera
P.O. Box 52
Bovina Center, New York 13740

Re: Order on Consent
R4-2013-0222-33

Dear Ms. Riera:

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

This will also acknowledge receipt of \$250 the civil penalty pursuant to Paragraph I.

Sincerely,

Jill T. Phillips
Assistant Regional Attorney
Region 4

Enclosure

cc: S. Swenson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 15

**ORDER ON
CONSENT**

File No.
R4-2013-0222-33

-By-

Kim Riera

RESPONDENT

WHEREAS:

Jurisdiction

1. Respondent, Kim Riera, owns property located at 1546 County Highway 6, Bovina Center, New York (Delaware County) (Tax Map #174.3-3-1) ("site"). The site contains the Little Delaware River which is classified as a C(t) stream ("stream"). The site is located within the New York City watershed.
2. Respondent is a "person" as defined at 6 NYCRR 608.1(y).
3. Regulations at 6 NYCRR 608.1(aa) define 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)."
4. Regulations at 6 NYCRR 608.1(a) and (b) define 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.
5. ECL 15-501(1) and 6 NYCRR 608.2(a) provide that no person or local public corporation shall 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.

Article 15 Stream Protection Violation

6. On February 12, 2013, Department staff conducted an inspection of the site and observed that Respondent had placed fill on the bed and banks of the stream.

7. Department staff have reviewed its records and determined that Respondent does not have an Article 15 permit to place fill on the bed and banks of the stream.

8. Respondent's placement of fill on the bed and banks of the stream without an Article 15 permit is a violation of 6 NYCRR 608.2(a) and ECL 15-501(1).

Civil Penalty

9. ECL Article 71-1127 generally provides for a civil penalty of \$2,500 per day for violations of ECL Article 15 and \$500 per day for each day the violation continues and such person may be enjoined from continuing such violation.

Waiver of Hearing

10. Respondent has affirmatively waived her 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. In respect of the aforesaid violation, a civil penalty in the amount of TWO HUNDRED FIFTY DOLLARS (\$250) is hereby assessed against the Respondent. 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 certified or bank check made payable to the NYS DEC.

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

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

IX. 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, her agents, servants, employees, successors and 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

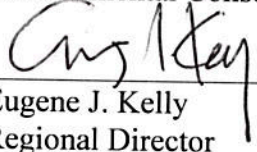
D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes 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.

X. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violation in this Order.

DATED: 5/15, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

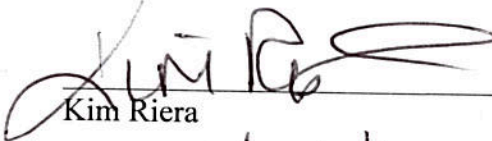
BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

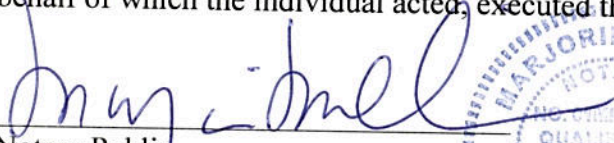

Kim Riera

DATE: 5/14/13

STATE OF NEW YORK)

COUNTY OF Delaware) ss.:

On the 14 day of May in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Kim Riera, 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.


Notary Public



SCHEDULE OF COMPLIANCE

1. By July 15, 2013, Respondent shall remove the fill from the bed and banks of the stream, including the fill on the adjacent property owned by the Town of Bovina. All fill shall be disposed of a minimum of 100 feet from any water body. Upon the completion of the fill removal the area shall be seeded and mulched.