

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
the Environmental Conservation Law
("ECL") Article 24 and Part 750
of Title 6 of the Official
Compilation of Codes, Rules
and Regulations of the State of
New York ("6 NYCRR")

ORDER ON CONSENT

File No. R4-2007-0817-105

- by -

Dennis Loiselle and Laurel Flagler
P.O. Box 58
Wyantskill, NY 12198

Respondents

WHEREAS:

1. The Department has jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.
2. Respondents, Dennis Loiselle and Laurel Flagler, own property in and adjacent to Freshwater Wetland G-11 ("wetland") at or near State Route 7 in the Town of Pittstown, Rensselaer County ("site"). Respondent's mailing address is: P.O. Box 58, Wyantskill, New York.
3. Respondent is a "person" as defined in 6 NYCRR §663.2(w).
4. Department staff inspected the site on August 23, 2007 and found that an approximately 15-20 foot wide driveway had been constructed from Route 7, through approximately 190 feet of the wetland and approximately 350 feet of the wetland's 100 foot adjacent area.
5. During the inspection of August 23, 2007 Department staff also observed excavation of drainage ditches through the wetland, which involved the excavation of portions of natural stream channels and/or old drainage ditches. All, or portions, of the spoil from the excavations was placed into the wetland.
6. Respondent was not issued a wetland permit to build this driveway or to excavate the drainage ditches.

7. ECL § 24-0701(2) and 6 NYCRR 663.4(d)(19) require that a permit be issued to construct, expand, or substantially modify drainage ditches in a protected wetland.
8. Respondent's construction of drainage ditches through the wetland without a permit is a violation of ECL § 24-0701(2) and 6 NYCRR 663.4(d)(19).
9. ECL § 24-0701(2) and 6 NYCRR 663.4(d)(20) require that a permit be issued to fill in a protected wetland or an adjacent area to a protected wetland.
10. Respondent's placement of fill in the wetland and the adjacent area of the wetland without a permit is a violation of ECL § 24-0701 and 6 NYCRR 663.4(d)(20).
11. ECL § 24-0701(2) and 6 NYCRR 663.4(d)(25) require that a permit be issued to grade an adjacent area to a protected wetland.
12. Respondent's grading of the adjacent area of the wetland without a permit is a violation of ECL § 24-0701(2) and 6 NYCRR 663.4(d)(25).
13. ECL § 24-0701(2) and 6 NYCRR 663.4(d)(28) require that a permit be issued to construct a road in a protected wetland or an adjacent area to a protected wetland.
14. Respondent's construction of a driveway through the wetland and the area adjacent to the wetland without a permit is a violation of ECL § 24-0701(2) and 6 NYCRR 663.4(d)(28).
15. ECL § 71-2303(1) provides for up to \$3,000 in civil penalties for each violation of a regulation and the restoration of the affected freshwater wetland to its condition prior to the violation.
16. Respondent has 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 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 violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is hereby assessed against the Respondent. FIVE HUNDRED DOLLARS (\$500) 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.

The balance of the penalty, TWO THOUSAND DOLLARS (\$2,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. 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 Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

- II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for it.
- 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, his 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. All communications except where otherwise specifically directed should be sent to:
- For Department:
Regional Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306
- IX. This Order is deemed effective on the date signed by the Department.
- X. 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, their 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.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

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

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: _____, 2009
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.

Dennis Loiselle

DATE: _____

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

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, 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 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
Qualified in the County of:
My Commission Expires:

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.

Laurel Flagler

DATE: _____

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

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, 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 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
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Respondent shall remove all fill placed in the wetland and 100 foot adjacent area, including the culvert, as flagged.
2. Respondent may stockpile all fill removed in an upland location from the wetland.
3. Within 60 days from the effective date of this Order, Respondent shall submit to the Department for approval plans describing the placement of the new driveway. Once approved the plan shall become enforceable under the Order.
4. Before commencing the work described above, Respondent shall establish an effective erosion control barrier between all areas where fill is to be removed and the adjacent undisturbed wetland.
5. All remedial work in the wetland shall commence no sooner than May 1, 2009 and be completed no later than August 31, 2009.
6. Upon the completion of the work described above, all wetland on the property and all areas within 100 feet of the wetland boundary on the property, except for the approved driveway, shall be allowed to revert to natural vegetation and shall remain undisturbed unless a wetland permit is obtained for some specific regulated activity. Respondent may temporarily seed the disturbed areas to stabilize the site.