

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 5843

December 11, 2017

Marek Mierzejewski
30 Leroy Avenue
Craryville, NY 12521

Re: Order on Consent
R4-2017-1113-270

Dear Mr. Mierzejewski:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

cc: T. Brady



Department of
Environmental
Conservation

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

In the Matter of Violations of
Article 15 of the Environmental Conservation
Law ("ECL") and Title 6 of the Official
Compilation of Codes, Rules and Regulations
of the State of New York,

ORDER ON CONSENT

DEC File No.
R4-2017-1113-270

-by-

Marek Mierzejewski
30 Leroy Avenue
Craryville, NY 12521,

Respondent.

WHEREAS:

Jurisdiction

1. The New York State 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, the Department regulates and controls the water resources of the state pursuant to ECL Article 15, and Part 608 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) *et. seq.*

Respondent

2. Respondent, Marek Mierzejewski, is an individual and owner of the parcel of property at 75 Schmeichel Road, Hillsdale, New York ("Site"), containing a portion of an unmapped, perennial stream that flows into a protected stream classified by the Department as "C(ts)," or trout spawning stream pursuant to regulations at 6 NYCRR §§ 701.8 and 701.25(b).

3. Respondent is a person as defined by regulation 6 NYCRR § 608.1(y).

VIOLATION

4. On November 3, 2017, Department staff responded to the Site following a referral from an Environmental Conservation Officer on October 12, 2017.

5. ECL § 15-0501(1) states in relevant part: "no person or public corporation shall change, modify or disturb the course, channel or bed of any [classified] stream . . . or remove any sand, gravel or other material from the bed or banks of such a stream without a permit issued pursuant to subdivision 3 of this section."

6. Regulation 6 NYCRR § 608.2(a) further provides: “Except as provided in subdivision (b) of this section, 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.”

7. On November 3, 2017, Department staff observed significant damage to the streambed at the Site due to the unpermitted construction of a large concrete impounding wall creating an artificial pond; an unpermitted and insufficiently constructed culvert; and unpermitted excavation to the streambed.

8. The stream on Respondent’s property flows into a stream designated as class C(ts) pursuant to 6 NYCRR §§ 701.8 and 701.25(b), indicating that the designated stream is a trout spawning stream best used for fishing.

9. Regulation 6 NYCRR § 863.4 provides that “any continuous flowing natural stream which is not shown on the reference maps shall have the same classification and assigned standards as the waters to which it is directly tributary.”

10. Respondents construction of the impounding wall and culvert, and the excavation of the streambed, is an ongoing violation of ECL § 15-0501(1) and 6 NYCRR § 608.2(a).

Civil Penalty

11. ECL § 71-1127(1) provides that: “Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 . . . shall be liable for a civil penalty of not more than two thousand five hundred dollars for such violation and an additional civil penalty of not more than five hundred dollars for each day during which such violation continues[.]”

Waiver of Hearing

12. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing 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 TWO THOUSAND, FIVE HUNDRED DOLLARS (\$2,500). 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 company or bank check made payable to NYS DEC.

II. **Settlement.** Timely payment of the civil penalty and the implementation of the approved EBP(s) will be considered full compliance with the terms and conditions of this Order, and is accepted as full settlement of the violations described above.

III. **Communications.** All communications required herein shall be made to:

For the Department:

DEC Region 4
1130 North Westcott Road,
Schenectady, NY 12306
Attn: Natural Resources Supervisor

For the Respondent:

Marek Mierzejewski
30 Leroy Avenue
Craryville, NY 12521

IV. **Access.** Respondent shall allow duly authorized representatives of DEC access to the facilities without prior notice, at such times as may be desirable or necessary for DEC to inspect and determine the status of Respondent's compliance with this Order and the ECL.

V. **Indemnification.** Respondent shall indemnify and hold the Department, New York State, and their representatives and employees harmless for all claims, suits, 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.

VI. **Entire Agreement.** This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified, except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating intent to modify this Order.

VII. **Effective Date.** The effective date of this Order shall be the date it is signed by the Regional Director.

VIII. **Termination Date.** This Order shall terminate upon the Department's determination that Respondent has complied with all the terms, conditions and terms of the Order.

IX. **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.

X. Review of Submitted Documentation:

1. All documents 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.

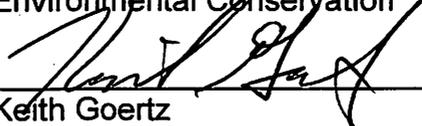
3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications 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.

DATED: December 11, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director

SCHEDULE OF COMPLIANCE

1. Respondent shall immediately cease all activity within the bed and banks of the protected stream until such time that qualified professionals can be retained to proceed with remediation.
2. **Within fourteen (14) days of the effective date of this Order**, erosion and sediment control (i.e., silt fencing) shall be installed on either side of the stream where areas of bare soil are present.
3. **Within thirty (30) days of the effective date of this Order**, Respondent shall retain the services of a qualified professional to develop a remediation plan for this site. The plan shall include details on:
 - a. Dewatering the site while work is being done;
 - b. Complete removal of the concrete retaining wall, culvert pipe, and pond;
 - c. Establishment of appropriate bankfull width and depth throughout the impacted reach;
 - d. Streambed grade control, if deemed necessary by the professional consultant;
 - e. Long term soil stabilization;
4. If Respondent requires permanent stream crossing on-site, **within sixty (60) days of the effective date of this Order**, Respondent shall submit to the Department a plan proposal for construction and use of an appropriately sized and embedded structure.
5. Upon receipt of written notification from the Department that the plans have been approved, Respondent shall make any necessary preparations to ensure that work can commence at the beginning of the 2018 Protected Stream work window (June 15, 2018).
6. Following implementation of the plan, Respondent shall allow the stream to remain in its natural state.
7. **Within fifteen (15) days of plan completion**, Respondent shall notify the Department to arrange for site inspection.
8. Compliance with this Schedule shall not be a defense to subsequent violations.