

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Environmental
Conservation Law (ECL) Articles
15 and 27 and Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York
(6 NYCRR)

- by -

ORDER ON CONSENT

File No. R4-2008-1113-159

Randy Perkins
2931 River Road
Melrose, NY 12121

Respondent

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. The Department has jurisdiction in all matters pertaining to the collection, treatment and disposal of solid waste pursuant to ECL Article 27 and applicable regulations.
3. Respondent, Randy Perkins owns property at 2931 River Road, Melrose, New York, which is adjacent to the shoreline of the Hudson River ("site").
4. On November 8, 2008, Department staff inspected the site and observed that Respondent had placed fill and approximately 50 wooden pallets along the shoreline of the Hudson River both in the water and on the banks, without a permit.
5. Regulations at 6 NYCRR 608.5 (I) (a) provide that "no person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the state or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this Part."
6. Respondent's placement of fill in the river without an Article 15 permit is a violation of 6

NYCRR 608.5 (I) (a).

7. Regulations at 6 NYCRR 360-1.5(a) provide that “no person shall dispose of solid waste in this State except at a disposal facility exempt from the requirements of this Part; or a disposal facility authorized to accept such waste for disposal pursuant to this Part.”

8. Respondent’s disposal of approximately 50 pallets along the shoreline of the Hudson River is a violation of 6 NYCRR 360-1.5(a).

9. Regulations at ECL § 71-1127 provide for a civil penalty of up to \$500 per day for a violation of Article 15 and up to \$100 for each day that such violation continues. Injunctive relief is also available.

10. Regulations at ECL § 71-2703 provide that any violator of Articles 3 or 7 of the provisions of Article 27 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to Seven Thousand Five Hundred Dollars (\$7,500) for each violation and an additional penalty of not more than \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

Waiver of Rights

11. 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 the terms, provisions and conditions contained herein.

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

Civil Penalty

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of SEVEN HUNDRED FIFTY DOLLARS (\$750) which 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.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

Schedule of Compliance

II. The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order on Consent and enforceable thereunder.

Force Majeure

III. Respondent shall not be in default of compliance with this Order if it is unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war, strike, riot or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify DEC in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

Communications

IV. All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Natural Resources Supervisor.

Access

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

Summary Abatement

VI. 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.

Indemnification

VII. Respondent shall indemnify and hold DEC, 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.

Review of Submittals

VIII. 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 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 so 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 of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission 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 submission 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.

Binding Effect

IX. The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

Modification

X. 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.

Entire Order

XI. 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 X 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.

Effective Date

XII. The effective date of this Order shall be the date it is signed by the Regional Director.

Reservation of Rights

XIII. 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.

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 officers, directors, 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 directors, officers, 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.

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.

Randy Perkins

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

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall remove all fill from the bed and banks and relocate it to a suitable upland location.
2. Within 30 days of the effective date of this Order, Respondent shall remove the wooden pallets from the site. The Department shall be notified in writing of the location of their disposal.