

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, NY 12306-2014

P: (518) 357-2048 | F: (518) 357-2087

www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED

7015 0640 0000 2327 0278

October 9, 2015

Elizabeth Sarkisian
667 Victoria Avenue
Paramus, NJ 07652

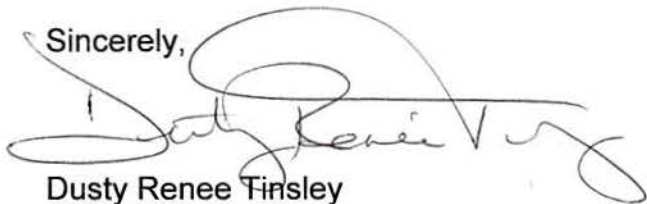
Re: Order of Consent
R4-2015-0824-102

Dear Ms. Sarkisian:

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

This will also acknowledge receipt of \$510 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Swenson



Department of
Environmental
Conservation

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 15
And 6 NYCRR Part 608

ORDER ON CONSENT
File No. R4-2015-0824-102

-by-

Elizabeth Sarkisian
667 Victoria Avenue
Paramus, New Jersey 07652

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is a department of the State of New York which, pursuant to Titles 1 and 5 of Article 15 of the Environmental Conservation Law (ECL), is authorized to regulate and control the water resources of the state of New York.

Respondent

2. Respondent, Elizabeth Sarkisian, owns a parcel of land located at 880 Westkill Road, Benheim, New York 12131 (Schoharie County)("Site") that contains, in part, the Westkill, a C(t) class protected stream.

Violation

3. ECL §15-0501(1) states that "Except as provided in subdivisions 4, 5, 6 and 7 of this section, no person or public corporation shall change, modify or disturb the course, channel or bed of any stream as defined in subdivision 2, 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."

4. 6 NYCRR 608.2 states that: "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".

5. During an inspection on August 12, 2015, Department staff observed that Respondent had conducted work on the Westkill at the Site without proper permits, including:

- a. conducting work in the flowing water;
- b. constructing a non-agricultural ford crossing;
- c. removing riparian habitat by bulldozing a large jurisdictional area consisting of both stream bed and banks;
- d. constructing a pavilion;
- e. adding a small recreational access to the Westkill; and
- f. adding a bridge crossing for access to land on the opposite side of the Westkill.

6. Respondent's work on the Westkill at the Site without proper permits are violations of ECL §15-0501 and 6 NYCRR Part 608.2.

Civil Penalty

7. ECL §71-1127(1) provides for a penalty of up to TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) for each violation of 6 NYCRR 608.2 and FIVE HUNDRED DOLLARS (\$500) per day for continuing violations.

Waiver of Hearing

8. Respondent has affirmatively waived her right to a hearing as provided by law and has consented to the issuance of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

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

I. **Civil Penalty.** In respect to the Order's violations, a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is assessed against the Respondent for the above violations of which FIVE HUNDRED DOLLARS (\$510) 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. ONE THOUSAND NINE HUNDRED AND NINETY DOLLARS (\$1,990) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance and compliance with the Environmental Conservation Law Article 15 and 6 NYCRR Part 608 for five years from the effective date of this Order.. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are

enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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, its directors, officers, employees, servants, agents, successors or assigns.

VII. **Modification.** 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 the provisions of the 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 obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility 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, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **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 State or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. 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

E. 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. **Review of Submitted Documentation.** 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.

XII. **Default.** Respondent shall not be in default of compliance with this Order if they are 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 the Department 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.

XIII. **Third Parties.** This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

XIV. **Communications.** Communications shall be sent to

For Department:

Dusty Renee Tinsley
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

Elizabeth Sarkisian
667 Victoria Avenue
Paramus, New Jersey 17652

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: October 8, 2015

Rotterdam, New York

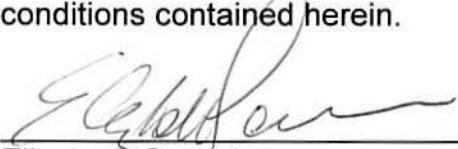
Marc Gerstman
Acting Commissioner
New York State
Department of Conservation

BY:


Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

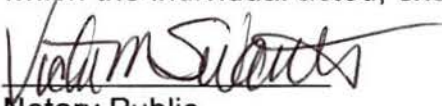
Respondent hereby consents to the issuing and entering of this Order, waives her rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.


Elizabeth Sarkisian

DATE: 10/5/2015

STATE OF NEW ^{Jersey} ~~YORK~~)
) ss.:
COUNTY OF Bergen)

On the 5th day of October in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Elizabeth Sarkisian, 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 the which the individual acted, executed the instrument.


Notary Public
Qualified in the County of: Bergen
My commission expires:

VICKI M. SWARTS
NOTARY PUBLIC OF NEW JERSEY
ID # 2050099
My Commission Expires 10/8/2018

Schedule of Compliance

Action to be taken	Deadline
Respondent shall submit the attached certification signed and notarized stating that effective immediately she, or anyone on her behalf, will not use the ford for anything other than agricultural activities involving the crossing and re-crossing of the Westkill by livestock or farm equipment.	Within 10 days of the effective date of this Order.

COMPLIANCE VERIFICATION AFFIDAVIT

ORDER ON CONSENT
R4-2015-0824-102

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

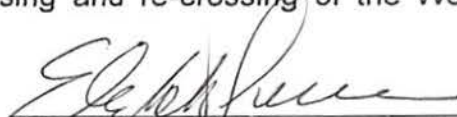
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-by-

Elizabeth Sarkisian
667 Victoria Avenue
Paramus, New Jersey 07652

I, Elizabeth Sarkisian, being duly sworn, do depose and say that I affirm that effective immediately I will not use, or allow anyone to use, the ford located on property I own at 880 Westkill Road, Benheim, New York 12131 (Schoharie County) for anything other than agricultural activities involving the crossing and re-crossing of the Westkill by livestock or farm equipment.


Elizabeth Sarkisian


Date Signed



Notary Public
Qualified in the County of:
My commission expires:
VICKI M. SWARTS
NOTARY PUBLIC OF NEW JERSEY
ID # 2050099
My Commission Expires 10/8/2018