

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
7017 1070 0001 0125 8473

June 15, 2018

Scott Colleran
55 W. Santa Barbara Road
Lindenhurst, NY 11757

Re: Order on Consent
R4-2017-1017-251

Dear Mr. Colleran:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery/ jv

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Brady



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violation of
Article 15 of New York State Environmental
Conservation Law

-by-

ORDER ON CONSENT
R4-2017-1017-251

Scott Colleran
55 W. Santa Barbara Road
Lindenhurst, NY 11757

Respondent

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, Scott Colleran, owns property located immediately southeast of the intersection of County Road 354 and Rivenburg Road in Rensselaerville, New York which includes a portion of an unnamed, protected stream (H-193-48-1) which is classified as a C(T) stream.

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) define “Banks” as “*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 highwater line; with the following exception: where a generally uniform slope of 45 degrees (100 percent) or greater adjoins the bed of the watercourse, the band 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.*”

5. Regulations at 6 NYCRR 608.1(b) define “Bed” as “*that land area of a watercourse covered by water at mean high water.*”

Violation

6. On August 29, 2017, August 31, 2017 and September 27, 2017, Department staff inspected the site and observed that the protected stream had been impounded across its entirety using streambed material from downstream of the site, and that there were several ATV trails leading down to and across the stream in this location.

7. Regulations at 6 NYCRR 608.2 (a) provide that “*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.*”

8. Respondent did not have a permit to disturb the stream.

9. Respondent's disturbance of the protected stream is a violation of regulations at 6 NYCRR 608.2 (a).

Civil Penalty

10. ECL Section 71-1127(1) provides for a penalty of up to two thousand five hundred dollars (\$2,500) for each violation of regulations at 6 NYCRR 608.2 and five hundred dollars (\$500) per day for continuing violations.

Waiver of Hearing

11. Respondent has affirmatively waived its 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. With respect to the aforesaid alleged violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent and 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.

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

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and its 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.

IV. 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.

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

VI. 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 Respondents 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, his agents, his servants, his employees, his successors and his 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 or any other third party, provided, however, that Respondent waive 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.

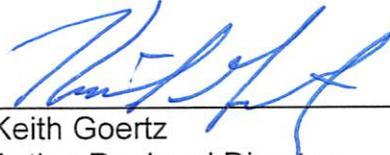
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed 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 his obligations to obtain such formal approvals as may be required by this Order.

VIII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: *June 14*, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Acting Regional Director
Region 4

CONSENT BY RESPONDENT

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

Scott Colleran

SIGNED: [Signature]

TITLE: OWNER

DATE: 6/11/18

STATE OF NY

COUNTY OF Suffolk) ss.:

On the 11 day of June in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared Scott Colleran 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.

[Signature]

Notary Public
Qualified in the County of:
My Commission Expires:

LAURA MAZZILLI
Notary Public, State of New York
No. 01MA6271579
Qualified in Suffolk County
Commission Expires November 5, 2020