

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 7735

May 3, 2019

Guy Merison
1185 Ave of the Americas
9th Floor
New York, NY 10036

Re: Order on Consent
R4-2019-0313-18
Shekomeko Creek Farm, LLC

Dear Mr. Merison:

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

This will also acknowledge receipt of \$200 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Brady

**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

-by-

R4-2019-0313-18

Shekomeko Creek Farm, LLC
285 Silvernails Road
Gallatin, NY 12567,

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"). More specifically, 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, Shekomeko Creek Farm, LLC, is a domestic limited liability company located in the Town of Gallatin, County of Columbia, State of New York.

3. Respondent is a person as defined at ECL § 15-2703(8) and 6 NYCRR § 608.1(y).

4. The parcel of property on which Respondent farm is located contains a portion of a protected stream (the "Site") known as Shekomeko Creek (FIN# H-188-39)(the "Stream") which has been classified by the Department as "C(ts)," or trout spawning stream, pursuant to regulations at 6 NYCRR §§ 701.8 and 701.25(b).

Violation

5. On February 18, 2019, an Environmental Conservation Officer ("ECO") driving by the Site observed from the adjacent road that bank stabilization activities had been conducted in the Stream at the Site.

6. On February 21, 2019, Department staff, accompanied by the reporting ECO, conducted a Site inspection and determined that Respondent had utilized an excavator to install boulders for approximately seventy-five (75) linear feet along the streambed and

right bank of the Stream, narrowing the width of the streambed by approximately one-third of its original, unobstructed width.

7. Department staff further observed that the excavator had disturbed large portions of the stream bank, leaving the affected area devoid of bank-stabilizing vegetation.

8. ECL § 15-0501(1) states, in relevant part, that: "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."

9. Regulation 6 NYCRR § 608.2(a) likewise states, in relevant part, 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."

10. At all relevant times, Respondent did not possess a valid permit to undertake the work described above in the bed and banks of the Stream.

11. Respondent's unpermitted activity in the bed and banks of the Stream violated ECL § 15-0501(1) and 6 NYCRR § 608.2(a).

Civil Penalty

12. 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 [. . . .] or who violates or who fails to comply with any rule, regulation, determination or order of the department heretofore or hereafter promulgated pursuant to 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

13. 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 ONE THOUSAND DOLLARS (\$1,000), of which EIGHT HUNDRED DOLLARS (\$800) is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order and its Schedule of Compliance in a timely fashion. If Respondent fails to comply with such requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

The payable portion of the civil penalty, TWO HUNDRED DOLLARS (\$200), shall be paid by bank check or company check made payable to the NYS Department of Environmental

Conservation, which shall be sent along with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check to:

Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany NY 12233-4900

The executed Order on Consent (along with any applicable submissions) shall be sent to:

Department of Environmental Conservation
Region 4, Office of General Counsel
Attn: Stephen Repsher
1130 North Westcott Road
Schenectady, NY 12306

Alternatively, payment may be made electronically. Further information on electronic payment is located at: <http://www.dec.ny.gov/about/61016.html#On-Line>

II. Schedule of Compliance. Respondent shall comply with the terms and conditions of this Order, including all applicable items in the attached Schedule of Compliance. Any records submitted to the Department shall include the owner's name, facility name and address, contact name, 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 under or controlled by Respondent.

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 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, its directors, officers, employees, agents, successors or assigns.

VII. Modification. 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, such change to be made only upon written agreement of the parties.

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 for the Department 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. The Department will provide Respondent with a fully

executed copy of this Order as soon as practicable thereafter.

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 the Respondent for any other violations of the ECL, rules or regulations promulgated thereunder;
- C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;
- D. Respondent's rights 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 submittal 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.
- 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 reasonably 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. Communications. Unless specified otherwise, all communications required herein shall be made to:

For the Department:

New York State Dept. of Environmental Conservation
Region 4
1130 North Westcott Road,
Schenectady, NY 12306
ATTN: Natural Resources Supervisor

For the Respondent:

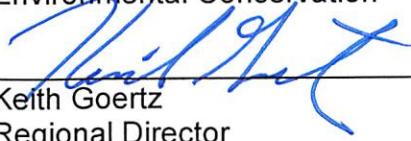
Shekomeko Creek Farm, LLC
ATTN: Guy Merison
285 Silvernails Road
Gallatin, NY 12567

XIII. Termination. The Order shall terminate upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: May 2, 2019
Rotterdam, New York

BY:

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation


Keith Goertz
Regional Director

CONSENT BY RESPONDENT

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

Authorized Representative:

SIGNED: 

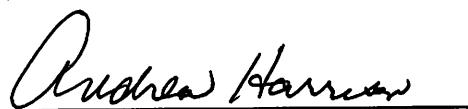
TITLE: GENERAL PARTNER of Shekomeko Creek Farm

PRINTED: J. G. MERISON

DATE: 4/29/19

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

On the 29th day of April in the year 2019, before me, the undersigned, personally appeared Jonathan Guy Merison, personally known
(Full name)
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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

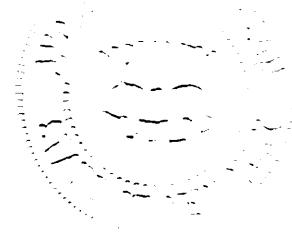


Notary Public

Qualified in the County of:

My Commission Expires: 4/23/2023

ANDREA R HARRISON
NOTARY PUBLIC, STATE OF NEW YORK
NO. 0111A6323273
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES APRIL 23, 2023 - 2024



SCHEDULE OF COMPLIANCE

Special Conditions:

1. Respondent shall cease all earthmoving and disturbance activity within the protected stream jurisdiction, except as specifically provided for in this Schedule of Compliance.
2. Prior to fill removal, Respondent shall install silt fencing along any areas of disturbance to prevent turbid water from entering the stream until the area is adequately revegetated. Respondent shall remove all silt fencing once the area attains at least 80% vegetative cover.
3. Equipment operation in the active stream channel is prohibited.
4. Respondent shall discharge no sediment or turbid waters to wetlands or waterbodies. For any stream work, the water below the work area shall remain as clear as the water flowing above the work site.
5. For any stream work, Respondent shall divert the stream flow to isolate the work area by: a) piling sandbags; b) constructing a berm; c) building a temporary channel; d) installing a temporary pipe; or e) pumping.
6. Respondent shall restrict any disturbance of the stream bed and banks to the minimum amount necessary to complete the project. Upon completion of the project, Respondent shall shape, seed, and mulch any soil exposed by the work.

Required Work:

1. **Within seven (7) days of the effective date of this Order**, Respondent shall install erosion and sediment control (i.e., silt fencing) on the stream bank where areas of bare soil are present.
2. **Within fifteen (15) days of the effective date of this Order**, Respondent shall consult with a qualified professional to develop a remediation plan, which shall include details on:
 - a. removal from the stream bed and bank of the installed rock; and
 - b. establishment of a stabilized, non-eroding bank that incorporates the standards outlined by the NYSDEC Shoreline Stabilization, and Shoreline Stabilization Techniques documents (which may be found online at the NYS Department of Environmental Conservation website, at):
 - i. Shoreline Stabilization:
<http://www.dec.ny.gov/permits/50534.html>
 - ii. Shoreline Stabilization Techniques:
<http://www.dec.ny.gov/permits/67096.html>

3. **Within forty-five (45) days of the effective date of this Order**, Respondent shall submit the plan to the Department for review and approval.
4. Upon receipt of written plan approval from Department staff, Respondent shall implement the approved plan **no earlier than** June 15, 2009.
5. Respondent shall complete all required work **no later than** August 1, 2019.
6. **Within fifteen (15) days of completion of all required work**, Respondent shall notify the Department and arrange a site inspection to verify satisfactory completion.

NOTES:

- Submission of the proposed remediation plan(s), as well as notification of completion of all required work, should be to Trevor Brady at: trevor.brady@dec.ny.gov, 607.652.2524.
- Compliance with the terms and conditions of this Schedule of Compliance shall not be a defense to subsequent violations.