

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3863

December 6, 2013

Terry Jacobs
301 East 21st #8E
New York, New York 10010

Re: Order of Consent
R4-2013-1106-134

Dear Mr. Jacobs:

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

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

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: M. Ellis

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL
CONSERVATION -----

In the Matter of the
Violations of Article 24 of
the Environmental Conservation
Law of the State of New York
and 6 NYCRR Part 663 by:

ORDER ON CONSENT
R4-2013-1106-134

Terry Jacobs
301 East 21st #8E
New York, NY 10010

Respondent.

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation ("Department or DEC") is an agency of the State charged with jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.

2. Respondent, Terry Jacobs, owns property that is contiguous to Robinson Pond at 1152 Lakeview Road in the Town of Copake that contains protected freshwater wetlands, identified as CO-3("wetland").

3. On July 26, 2013, the Department staff observed that Respondent had constructed wooden stairs and a 10 foot by 10 foot wooden dock on the lakeshore of Robinson Pond.

4. Respondent is a person as defined in 6 NYCRR 663.2(w).

Freshwater Wetlands Violations

5. ECL 24-0701(2) and 6 NYCRR 663.4(31) provides that no person shall install a dock in a wetland or its adjacent area without a permit from DEC.

6. Respondent violated ECL 24-0701(2) and 6 NYCRR 663.4(31) by installing a dock in the wetland without a permit from DEC.

Civil Penalties

7. ECL Section 71-2303 provides for a civil penalty of up to \$11,000 for each violation of ECL Article 24 and any permit, rule or regulation issued pursuant to Article 24.

8. Respondent has affirmatively waived his right to a hearing on this matter as 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 within this Order.

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

I. PENALTY

With respect to the violations identified in this Order, the Department assesses against Respondent a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) which shall be payable by certified check or money order made out to the New York State Department of Environmental Conservation and submitted along with a signed copy of this Order.

II. SETTLEMENT and RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in Paragraphs 3 through 12 of this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph IIA of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

III. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

IV. **BINDING EFFECT**

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.

V. **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 this Order by Respondent and its successors (including successors in title) and assigns.

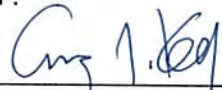
VI. **EFFECTIVE DATE**

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or a designee signs it.

DATED: Rotterdam, NY
December 5, 2013

JOSEPH MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION


BY:



Eugene J. Kelly
Regional Director, region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives his right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.



Terry Jacobs

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

On the 25 day of November in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared before me, 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 s/he executed the same in his capacity, and that by the signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

FARZANAA. SIDDIQI
Notary Public, State of New York
Qualified in Queens County
No. 01SI6285283
My Commission Expires 07/01/2017



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