

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER ON CONSENT**  
File No. R4-2009-0415-67

-by-

Robert H. Vadney  
10 Lee Avenue  
Schenectady, New York 12303

Respondent

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is a department of the State of New York which, pursuant to Titles 3 and 10 of Article 17 of the Environmental Conservation Law (ECL), is authorized to regulate the storage and handling of petroleum in the State of New York.
2. Respondent, Robert H. Vadney, is a water well driller as that term is defined at State Water Supply Statute at Environmental Conservation Law Section 15-1502(5): "a person who, for compensation or as part of property development and sale, engages in water well drilling activities.
3. Respondent's water well driller registration expired on March 31, 2009.
4. Environmental Conservation Law ("ECL") Section 15-1525(1) provides that: "No person shall engage in the business of water well drilling in the state of New York without first obtaining a certificate of registration from the department as hereinafter provided. All water well drilling shall be performed in accordance with the rules and regulations promulgated by the commissioner of health pursuant to subdivision eighteen of section two hundred six of the public health law."
5. ECL Section 15-1525(3) provides that: "before the commencement of drilling of any well or wells, the water well driller shall file a preliminary notice with the department; it shall also provide that upon the completion of the drilling of any water well or water wells, a completion report be filed with the department, giving the log of the well, the size and depth thereof, the capacity of the pump or pumps attached or to be attached thereto, and such other information pertaining to the withdrawal of water and operation of such water well or water wells as the department by its rules and regulations may require. The water well driller shall provide a copy of such completion report to the water well owner. The

number of the certificate of registration must be displayed on the well drilling machinery of the registrant. The certificate of registration shall also contain a notice to the certificate holder that the business activities authorized by such certificate are subject to the provisions of article thirty-six-A of the general business law. The fee for such certificate of registration shall be ten dollars annually. The commissioner shall promulgate a water well completion report form which shall be utilized by all water well drillers in satisfying the requirements of this section and any other provision of state or local law which requires the submission of a water well completion report or water well log.”

6. On April 1, 2009, Respondent was observed by Department staff drilling two wells across from 220 Salem Road South in the Town of New Scotland and prior notification wasn't provided the Department.
7. Respondent's drilling of two wells on or about April 1, 2009 without providing prior notification to the Department are violations of ECL Section 15-1525(3).
8. ECL Section 71-1115. Provides that: “ Any person violating the provisions of section 15-1525 shall be guilty of a violation punishable by a fine of not more than one thousand dollars, and in addition thereto, shall be liable for a civil penalty of not more than fifteen hundred dollars.”
9. Respondent has waived his right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on Consent (“Order”) pursuant to the provisions of Articles 15 and 71 of the ECL, and has agreed to be bound by the provisions, terms and conditions herein.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

**I. PENALTIES**

Respondent is hereby assessed a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3000) for the violations stated herein which shall be payable with the return of the signed and notarized Order. **Payments shall be made by bank or certified check or money order made out to the Department of Environmental Conservation.**

**II. STANDARD PROVISIONS**

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: \_\_\_\_\_, 2009  
\_\_\_\_\_, New York

Alexander P. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

By: \_\_\_\_\_  
Eugene J. Kelly  
Region 4  
Regional Director



## **STANDARD PROVISIONS**

**Payment.** . Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to:

Department of Environmental Conservation  
Region 4, Attn: Regional Attorney  
1130 North Westcott Drive  
Schenectady, NY 12306

**Effective Date and Duration.** The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

**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.

**Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**Indemnity.** 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 resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

**Modifications.** No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

**Settlement and Reservation of Rights.** 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 this Order against Respondent and its successors (including successors in title) and assigns. Nothing contained in this Order shall be construed as barring or diminishing the Commissioner's summary abatement powers with respect to Respondent.

**Entire Agreement.** This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Service.** If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

**Schedule of Compliance** - With the return of the notarized and signed Order to the Department, Respondent shall submit to the Department copies of his certification results for both water well drilling activities and pump installations. Respondent shall cease all well drilling activities until the certification results are submitted to the Department.