

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Violation of  
Article 17 of the Environmental Conservation  
Law ("ECL") of the State of New York and  
Part 703 et seq. of Title 6 of the Official Compilation of  
Codes, Rules and Regulations ("6 NYCRR")  
of the State of New York

**ORDER ON CONSENT**  
R4-2009-0423-67

- by -

Michael Worthy  
3346 FM 2327  
Queens City, Texas 75572

Respondent

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**WHEREAS:**

Jurisdiction

1. The Department of Environmental Conservation ("the Department") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State, pursuant to §3-0301 of the Environmental Conservation Law ("ECL"), Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("NYCRR") and Orders issued thereunder.

2. The Department has jurisdiction over the abatement and prevention of pollution of state waters pursuant to Article 17 of the ECL and Title 6 NYCRR Part 703.

Respondent

3. Respondent, Michael Worthy, 3346 FM 2327, Queen City Texas, is a construction manager for a company participating in the construction of the Millennium pipeline project.

4. Respondent is a person as defined in 6 NYCRR 700.1(a) (43).

Violation

5. Pursuant to ECL Article 17-0301, the Department promulgated water quality standards at 6 NYCRR 703.2 setting narrative water quality standards for turbidity.

Parameter	Classes of Waterbody	Standard
Turbidity	AA, A, B, C, D, SA, SB, SC, I, SD, A-Special	No increase that will cause a substantial visible contrast to natural conditions

6. On or about December 8, 2008, while Respondent was overseeing on-site construction operations, an operator of a Catapillar Tracko 330 entered Sands Creek (S-DE-032), a Class C(ts) stream, to remove a bridge crossing causing turbid discharges in the stream that caused a contravention of the turbidity standard, a violation of 6 NYCRR 703.2 .

#### Civil Penalty

7. ECL § 71-1929 provides, among other things, for a civil penalty of up to \$37,500 for violations of the provisions of Article 17 of the ECL cited herein, regulations promulgated thereunder, and for an additional \$37,500 for each day on which such violations continue, and that such violations may be enjoined.

#### Waiver of Hearing

8. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein.

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 THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) for the violation stated herein. The civil penalty is 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. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

III. Effective Date

The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it.

IV. Binding Effect

The provisions of this Order shall be deemed to bind Respondent and the Department, the State of New York, and its representatives and employees ..

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. Settlement

Compliance with the terms and conditions of this Order shall be in full civil settlement of the violation recited in this Order.

VII. ECATS

The Department staff will withdraw the ECAT issued to Respondent on December 9, 2008 (BA8765540) and any other ECATs issued to any other Person on December 9, 2008 arising out of the incident described in Paragraph 6 above for the violations contained herein upon the effective date of this Order.

DATED: May , 2009  
Rotterdam, New York

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

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

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives his right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

\_\_\_\_\_  
Michael Worthy

Date: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF NEW YORK )

) ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_ in the year \_\_\_\_\_ before me personally came Michael Worthy to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_ ; that he is the person described in and which executed the above instrument.

\_\_\_\_\_  
Notary Public  
Signature