

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
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January 26, 2016

Joan Tailleir, Esq.
Joan Tailleir Law
10 Mansion Street
Coxsackie, NY 12051

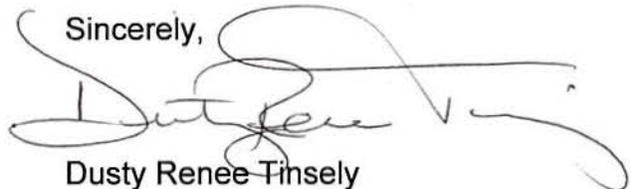
Re: Order of Consent
R4-2015-1014-121
William Pratt

Dear Ms. Tailleir:

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

This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsely
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Swenson



Department of
Environmental
Conservation

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations
of Article 24 of the New York State
Environmental Conservation Law,
and Title 6 Part 663 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York,

Order on Consent
File No. R4-2015-1014-121

-by-

William Pratt
38 Riverside Avenue
Coxsackie, New York 12051,

Respondent.

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation ("Department" or "DEC") is a department of the State of New York which, pursuant to Article 24 of the Environmental Conservation Law ("ECL"), is authorized to preserve, protect, and conserve freshwater wetlands and the benefits derived therefrom. In particular, DEC regulates and controls the water resources of the state pursuant to ECL Article 24 and the rules and regulations promulgated, in part, under 6 New York Code of Rules and Regulations ("6 NYCRR") Part 663.4.

RESPONDENT

2. 6 NYCRR Part 663.2(w) defines a "person" to mean "any corporation, firm, partnership, association, trust, estate, one or more individuals, or any unit of state or local government or any agency or subdivision thereof, including any state department, bureau, commission, board, or other agency; public authority, or public benefit corporation." Respondent is a person as defined at 6 NYCRR Part 663.2 (w).

3. Respondent William Pratt owns a parcel of land located at 38 Riverside Avenue, Coxsackie, New York 12051 ("Site"). Located on the Site is a Class 2 wetland identified as HN-102 ("Wetland"), along with the 100 foot Wetland adjacent area ("Adjacent Area"). Respondent is a person as defined by 6 NYCRR Part 663.2(w).

FIRST VIOLATION
REGULATED ACTIVITIES IN THE WETLAND AND ADJACENT AREA WITHOUT A PERMIT

4. ECL §24-0701(1) states that “After issuance of the official freshwater wetlands map of the state, or of any selected section or region thereof, any person desiring to conduct on freshwater wetlands as so designated thereon any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title.”
5. ECL §24-0701(2) states “Activities subject to regulation shall include any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly . . . and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland.”
6. During a September 23, 2015 inspection of the Site, Department staff observed that Respondent excavated, by clear-cutting trees and other vegetation, in the Wetland and Adjacent Area without a permit, which actions substantially impaired the functions served by the Wetland and Adjacent Area or the benefits derived therefrom.
7. Respondent’s unpermitted actions in excavating trees and other vegetation the Wetland and Adjacent Area, by clear-cutting trees and vegetation, are violations of ECL §24-0701(1).

SECOND VIOLATION
CLEAR-CUTTING TREES IN WETLAND

8. 6 NYCRR Part 663.4(22) states that a permit is required for clear-cutting timber. This type of activity is usually incompatible with a wetland, meaning “that a regulated activity is usually incompatible with a wetland and its functions or benefits.”
9. During a September 23, 2015 inspection of the Site, Department staff observed that Respondent conducted clear-cutting of trees in the Wetland without a permit.
10. Respondent’s clear-cutting of trees in the Wetland without a permit is a violation of 6 NYCRR Part 663.4(22).

THIRD VIOLATION
CLEAR-CUTTING VEGETATION OTHER THAN TREES IN WETLAND AND ADJACENT AREA

11. 6 NYCRR Part 663.4(23) states that a permit is required for clear-cutting vegetation other than trees. This type of activity is incompatible with the Wetland meaning “that a regulated activity is incompatible with a wetland and its functions and benefits” and is usually incompatible regarding the Adjacent Area meaning “that a regulated activity is usually incompatible with a wetland and its functions or benefits, although in some cases the

proposed action may be insignificant enough to be compatible.”

12. During a September 23, 2015 inspection of the Site, Department staff observed that Respondent conducted clear-cutting of vegetation other than trees in the Wetland and Adjacent Area without a permit.

13. Respondent’s clear-cutting of vegetation other than trees in the Wetland and Adjacent Area without a permit is a violation of 6 NYCRR Part 663.4(23).

CIVIL PENALTY

14. ECL §71-2303(1) provides that a person who violates any provision of Article 24 of the ECL or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of this state for a civil penalty not to exceed \$11,000 and the restoration of the affected freshwater wetland to its condition prior to the violation.

15. **Waiver.** Respondent affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of FOUR THOUSAND DOLLARS (\$4,000) of which TWO THOUSAND DOLLARS (\$2,000) 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. TWO THOUSAND DOLLARS (\$2,000) of the civil penalty is suspended conditioned on Respondent’s compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

Payment of the civil penalty shall not in any way alter Respondent’s obligation to complete performance under the terms of the Order.

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner’s name, address, 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 subordinate thereto.

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 the Department, the State of New York, and their representatives and employees harmless 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, servants, agents, successors or assigns.

VII. **Modification.** 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 the provisions of the 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 its obligation to obtain such formal approvals as may be required by this Order.

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 in order for DEC 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.

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 Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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 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 of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done 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. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so 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 of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission 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 submission 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 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. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Communications.** Communications shall be sent to

For Department:

Peter Innes
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

William Pratt
38 Riverside Avenue
Coxsackie, New York 12051

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: January 26, 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of Environmental
Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Respondent shall, within fifteen days of the effective date of this Order, remove and dispose of the woody vegetation lying on the east side of Riverside Road in the Adjacent Area. If disposed of elsewhere on the Site, the woody vegetation shall be at least 100 feet from the boundary of the Adjacent Area.
2. Respondent shall, within thirty days of the effective date of this Order, submit to the Department a statement and/or documentation setting forth where the woody vegetation was removed to and/or disposed of.
3. Respondent shall, within 140 days of the effective date of the Order:
 - a. using weed free straw and native seed mix, seed and mulch any areas of exposed soils on the east side of Riverside Road in the Adjacent Area;
 - b. plant native trees such as red maple (spaced at approximately 30 feet intervals), back tupelo (spaced at approximately 30 feet intervals), and American sycamore (spaced at intervals of over 40 feet) in the Adjacent Area;
 - c. establish necessary erosion and sediment controls (i.e. silt fencing) for the area of exposed soils on the east side of Riverside Road in the Adjacent Area that have been seeded and mulched; and
 - d. maintain the necessary erosion and sediment controls for the area of exposed soils on the east side of Riverside Road in the Adjacent Area which are seeded and mulched until such time that the area is fully vegetated.
4. Respondent shall provide to the Department, within 140 days from the effective date of this Order, photographs of the east side of Riverside Road showing that the Adjacent Area has been seeded and mulched, native trees have been planted as required, and erosion and sediment controls have been established and are being maintained.
5. At a minimum, survival of the initial plantings must exceed 85% or be replaced within one year after planting.
6. The Wetland and Adjacent Area shall remain undisturbed allowing for natural revegetation.