

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CORTLAND

STATE OF NEW YORK and the NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Plaintiffs,

- against -

JAMES C. STEVENS, III,

Defendant.

**PRELIMINARY
INJUNCTION and
CONSENT ORDER**

Index No.: EF14-553

Hon. Phillip R. Rumsey, JSC

UPON due and careful consideration of the affirmation of Assistant Attorney General Joseph M. Kowalczyk, dated November 13, 2014, the affidavit of Scott Cook, dated October 31, 2014, the affidavit of Donald W. Lake, Jr., P.E., dated October 30, 2014, plaintiffs memorandum of law dated November 13, 2014, the verified complaint, dated November 13, 2014, the verified answer, dated December 12, 2014, the answering affidavit of James C. Stevens, III, dated December 12, 2014, the affidavit of Timothy C. Buhl, dated December 12, 2014, the reply affirmation of Joseph M. Kowalczyk dated December 18, 2014, and the reply affidavit of Donald W. Lake Jr., dated December 18, 2014, and upon the arguments made before this court on December 19, 2014; and

PURSUANT TO an Order To Show Cause dated November 19, 2014, plaintiffs State of New York and the New York State Department of Environmental Conservation (DEC) (collectively the State) moved pursuant to Environmental Conservation Law (ECL) §§ 71-1929 and 71-1931, Executive Law § 63(12), and

CPLR 6311, to enforce the ECL, to abate a public nuisance and to bring an action for injunctive relief regarding a stormwater diversion project, including a pond with a stormwater out fall and an outlet channel, which collects stormwater and discharges such stormwater downslope onto St. Mary's Cometary property and Route 281. The stormwater diversion project is located on real estate owned by defendant James C. Stevens III, on Ridgeview Avenue in the Town of Cortlandville (the Site); and

UPON CONSENT OF THE PARTIES and without prejudice to either party it is hereby:

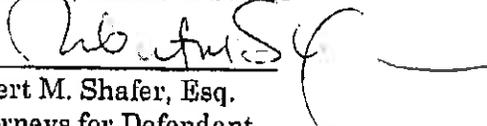
ORDERED that Stevens shall cease discharging water from the stormwater diversion project located on his property, unless and until he obtains a DEC permit and implements a DEC approved stormwater pollution prevention plan; and

IT IS FURTHER ORDERED that within twenty days of the date of this Preliminary Injunction and Consent Order, Stevens shall submit to the State for DEC review and approval, a proposed engineering plan for restoring the Site to pre-stormwater diversion project conditions and implementing appropriate stormwater controls. DEC shall approve, or conditionally approve with comments, the proposed engineering plan within fourteen days. Stevens shall implement the approved or conditionally approved engineering plan within twenty days of approval or conditional approval; and

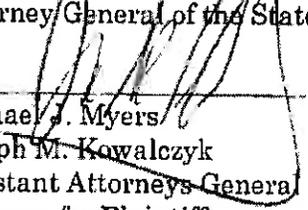
IT IS FURTHER ORDERED that the engineering plan shall include design specifications providing for abatement of the potential for future erosion

downgradient of the Site by restoring the drainage back to its original pre-project configuration and implementing appropriate stormwater controls. Stevens shall accomplish this by, at a minimum: i) redirecting the stormwater runoff from the Site drainage area back into its original existing channel and toward the west; ii) eliminating the perimeter drainage on the northern side of the pond which allows stormwater to bypass the pond and drain to the outlet channel; iii) eliminating the pond outfalls; and iv) eliminating the outlet channel downstream of the pond by compacting engineered earth-fill in the channel to the top of its banks to prevent runoff from flowing east through this channel.

Hereby consented to on behalf of James C. Stevens, III, on December 23, 2014,
Richman, Shafer & Shafer

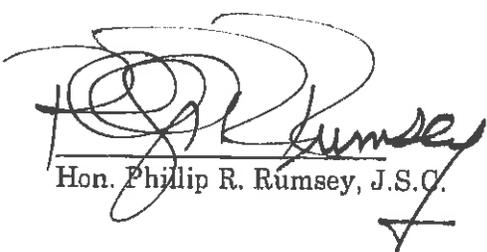
By: 
Robert M. Shafer, Esq.
Attorneys for Defendant
397 Route 281, P.O. Box 430
Tully, New York 13159-0403

Hereby consented to on behalf of the State on December 23, 2014,
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
Michael J. Myers
Joseph M. Kowalczyk
Assistant Attorneys General
Attorney for Plaintiffs
Environmental Protection Bureau
The Capitol
Albany, New York 12224

Dated: December 23, 2014
Cortland, New York

ENTER


Hon. Phillip R. Rumsey, J.S.C.