

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 5
1115 State Route 86, PO Box 296, Ray Brook, NY 12977-0296
P: (518) 897-1227 | F: (518) 897-1394
www.dec.ny.gov

August 6, 2015

Reale Construction Co., Inc.
Attn: Michael Reale or Peter Reale
411 County Route 56
Ticonderoga, New York 12883

RE: Route 9N Culvert Lining Notice of Violation
DEC Case No.: R5-20140619-2124
Order on Consent

Dear Mr. Reale:

I represent staff of the New York State Department of Environmental Conservation ("Department") in a matter that involves Reale Construction and the Route 9N culvert lining project in the Town of Hague, New York. On June 16, 2014, Environmental Conservation Officer John Ellithorpe issued Reale Construction a Notice of Violation ("NOV") for violating the conditions in a Water Quality Certification issued to the New York State Department of Transportation for the project. Lieutenant Ellithorpe saw the following violations: Reale Construction was discharging unfiltered water from the work site directly into Spring Hill Brook, which is a Class AA-Special water of the State; Reale failed to install or maintain erosion control devices; and Reale failed to maintain sufficient water flow downstream of the project site.

I have included an order on consent that would settle the violations. You will find a copy of the Water Quality Certification and a copy of the NOV attached to the order on consent as Exhibit 1 and 2. Department staff may address the violations by serving a notice of hearing and complaint on Reale Construction. After serving the complaint, staff would arrange for a hearing before an administrative law judge. At the hearing, staff would present testimony and evidence to support the complaint and a request for a penalty. Reale Construction would be allowed to offer testimony and to cross examine the Department's witnesses. Following the hearing, the Department's Commissioner may decide in favor of either Reale Construction or Department staff. As part of a decision for Department staff, the Commissioner may impose a penalty on Reale Construction for the violations.

Department staff prefers to settle the matter with Reale Construction at this time through an order on consent. Please review the order I have included with my letter, or have Reale's attorney review the order, and call me with questions. Please have the appropriate officer for the company sign the order where indicated. The order must be

Reale Construction Co., Inc.

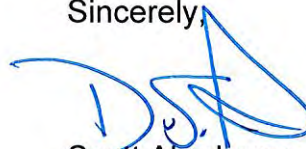
August 6, 2015

Page 2

signed in the presence of a notary public. Return the signed order to me by August 31, 2015. If I have not received a signed order by August 31, 2015, and we have not made other arrangements, I will consider the terms of the order withdrawn and I will arrange for service of a notice of hearing and complaint.

Thank you for your cooperation.

Sincerely,



Scott Abrahamson
Assistant Regional Attorney
New York State Department of
Environmental Conservation
Office of General Counsel
(518) 897-1214
scott.abrahamson@dec.ny.gov

DSA/bed
enclosure

ec: Brian Huyck, DEC-Region 5
Lt. John Ellithorpe, DEC-Region 5
David Chiusano, DEC-Central Office

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 15 of the Environmental Conservation Law ("ECL"), Article 6, Part 608 of the New York Code of Rules and Regulations, and Section 401 Water Quality Certification

ORDER ON CONSENT

DEC Case No.: R5-20140619-2124

**Section 401 Water Quality Cert.:
5-5226-00172/00001**

by:

Reale Construction Co., Inc.,

Respondent.

WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this State, pursuant to the Environmental Conservation Law ("ECL") § 3-0301; and the Department has been charged with the protection of waters of the State pursuant to Article 15 of the ECL and may issue Statewide Water Quality Certifications pursuant to 6 NYCRR 608.9 (b).

2. Respondent Reale Construction Company, Inc. is a domestic business corporation with a principle business address of 411 County Route 56, Ticonderoga, New York 12883 (referred to in this Order as "Reale").

3. Peter A. Reale is shown on the New York State Department of State, Division of Corporations website as the Chief Executive Officer of Respondent Reale.

4. Peter A. Reale has an address of 411 County Route 56, Ticonderoga, New York 12883 and is an officer of Respondent Reale and, at all times relevant to this Order, had the authority to exercise control over the day-to-day management of Reale during the relevant time periods noted in this Order, including Respondent's compliance with environmental laws and regulations, represented Reale in communications with the

New York State Department of Transportation, and in all regards was the responsible corporate officer for Reale during the relevant time periods noted in this Order.

FACTS

5. On January 10, 2013, the Department issued the New York State Department of Transportation (“DOT”) a Water Quality Certification to conduct culvert lining and other improvements to an existing culvert beneath New York Route 9N in the Town of Hague, Warren County, New York (see Permit ID 5-5226-00172/00001, attached to and made a part of this Order as **Exhibit 1**).

6. DOT contracted with Reale to complete the culvert lining and related improvements.

7. Reale was an independent contractor for the purposes of the culvert lining project and other improvements to an existing culvert beneath New York Route 9N in the Town of Hague, Warren County, New York and an “independent contractor” under the terms of the Water Quality Certification, “Item B,” page 7 of 7 (see **Exhibit 1**).

8. On June 16, 2014 staff of the Department’s Office of Public Protection issued Reale a Notice of Violation (“NOV”) for violating the terms of the water Quality Certification (see copy of NOV, attached to and made a part of this Order as **Exhibit 2**).

9. Staff issued the NOV based on their observations on June 16, 2014 of the culvert-improvement project; specifically staff observed that Reale was discharging water from the work site directly into Spring Hill Brook, which is a Class AA-Special water of the State; Reale was not filtering the project-site water before discharging the water into Spring Hill Brook.

10. Staff also observed that Reale failed to install or maintain erosion control devices.

11. Staff observed that Reale failed to maintain sufficient water flow downstream of the project site.

STATUTORY AUTHORITY

12. Respondent is a "person" as that term is defined in ECL § 15-0107 (1) and 6 NYCRR 608.1 (y).

13. **Exhibit 1**, Item B (page 7 of 7) states that independent contractors of DOT must comply with the terms of the Water Quality Certification and shall be subject to the same sanctions for violations of the ECL as those prescribed for the permittee.

14. The Department has the authority to issue Water Quality Certifications for certain types or sizes of activities that it deems to have an insignificant effect on water quality. ECL § 15-0103 (1)

15. The Department has the authority to enforce the terms of the Water Quality Certifications it issues. 6 NYCRR 608.2 (a)

16. Prior to discharging project-site water into a stream, navigable water or wetland, the water shall be treated as described in paragraph 16 of **Exhibit 1**, "Natural Resource Permit Conditions."

17. Before any soil is disturbed on the project site, the permittee shall install erosion and sediment control measures that are adequate to prevent erosion and off-site sedimentation and designed in conformance with the Department's technical standards (see **Exhibit 1**, paragraph 18, "Natural Resource Permit Conditions.")

18. During periods of work activity, sufficient flow of water shall be maintained at all times to sustain aquatic life downstream (see **Exhibit 1**, paragraph 14, "Natural Resource Permit Conditions.")

19. Any person who violates any condition of a permit issued pursuant to Article 15 of the ECL shall be liable for a civil penalty of not more than \$2,500 for each such violation and an additional civil penalty of not more than \$500 for each day during which such violation continues. ECL § 71-1127 (1)

VIOLATIONS

20. By discharging unfiltered water from the work site directly into Spring Hill Brook, which is a Class AA-Special water of the State, Reale violated the Permit Condition found in paragraph 16 of the Water Quality Certification.

21. By failing to install or maintain erosion control devices before soil is disturbed at the project site, Reale violated the Permit Condition found in paragraph 18 of the Water Quality Certification.

22. By failing to maintain sufficient flow of water downstream of the project site, Reale violated the Permit Condition found in paragraph 14 of the Water Quality Certification.

PENALTIES

23. This Order charges Reale with three (3) separate violations, for which Reale shall be liable for a total civil penalty of \$7,500.

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

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. CIVIL PENALTY

A. Civil Penalty. With respect to the violations detailed in this Order, Respondent is hereby assessed a civil penalty in the amount of **Seven Thousand Five Hundred Dollars (\$7,500)**.

B. Payable Penalty. Respondent shall pay the Commissioner the sum of **Two Thousand Five Hundred Dollars (\$2,500) within thirty (30) days of the Effective Date of this Order**. Respondent shall pay the amount of the penalties to the

Department with certified funds made payable to "New York State Department of Environmental Conservation" and mailed or delivered to: New York State Department of Environmental Conservation, Office of General Counsel Region - 5, attn: Betty Douglas, 1115 NYS Route 296, P.O. Box 296, Ray Brook, New York 12977. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

C. Suspended Penalty. The amount of \$5,000 is suspended upon the condition that Respondent complies with all the terms of this Order. If Respondent fails to comply with the terms of this Order, the suspended sum of \$5,000 shall be due within thirty (30) days of service on Respondent of written notice by Department staff. Department staff's determination of noncompliance shall be final and binding on Respondent, and Respondent consents to payment of such suspended penalty and affirmatively waives its right to any hearing or other process in connection with its penalty obligations under the terms of this Order on Consent.

D. Statutory Penalty. In the event Respondent fails to fully comply with the terms of this Order, Respondent shall be subject to penalties of up to \$500 per day, for each violation, pursuant to ECL § 71-1127, without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. DURATION

This Order shall take effect on the Effective Date, which is the date the Order is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when, in the Department's sole discretion, Respondent has fully complied with the requirements of this Order.

III. FORMAL TERMS

The provisions of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the violations recited in this Order. No term, condition, understanding or agreement purporting to modify or vary the terms of this Order shall be binding unless made in writing and subscribed by the party

to be bound. No informal oral or written advice, guidance, suggestion or comment by the Department regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Respondent, shall be construed as relieving Respondent or Respondent's obligation to obtain such formal approvals as may be required.

IV. OTHER ACTIONS NOT AFFECTED

Nothing contained herein shall be construed to prevent the Department from instituting any action or proceedings at law or equity for any violations not specifically alleged herein.

V. RESERVATION OF RIGHTS

Nothing herein shall be construed as a release or waiver by the Department of its rights to:

- (1) seek injunctive relief to abate any violation of law or this Order;
- (2) seek penalties as provided in paragraph I of this Order and an entry of judgment therefor;
- (3) seek penalties and other relief for any violations not set forth in this Order;
- (4) re-allege the violations listed in this Order to obtain injunctive relief or damages in support of natural resource damage claims;
- (5) seek to modify, suspend, or revoke any Department-issued permit;
- (6) seek any applicable criminal sanctions against any party; or
- (7) seek issuance by the Commissioner or his duly authorized representative, of a summary abatement Order against Respondent.

In addition, the Department reserves all such rights as it has to require Respondent to take any additional measures required to protect human health or the environment.

VI. COMMUNICATIONS

Correspondence to the Department required under this Order shall be provided to:

Scott Abrahamson, Assistant Regional Attorney
Office of General Counsel - Region 5
1115 NYS Route 86, P.O. Box 296
Ray Brook, NY 12977
(518) 897-1214
Fax: (518) 897-1394
scott.abrahamson@dec.ny.gov

Correspondence to Respondent required under this Order shall be provided to:

Michael Reale or Peter Reale
Reale Construction Co., Inc.
411 County Route 56
Ticonderoga, New York 12883

Any party may change its designee(s) under this paragraph upon written notice to the other party.

VII. MODIFICATION

No change in this Order shall be effective except as set forth in written Order of the Commissioner or the Commissioner's designee: (a) upon written application by Respondent and with specific justification for the relief sought, or (b) upon the Commissioner's own findings after an opportunity to be heard has been given to Respondent, or (c) pursuant to the summary abatement provisions of the ECL. In those instances in which the Respondent desires to change any of the provisions, terms or conditions of this Order it shall make written application to: Scott Abrahamson, Assistant Regional Attorney, Office of General Counsel - Region 5, 1115 NYS Route 86, P.O. Box 296, Ray Brook, NY 12977, setting forth the grounds for the relief sought and such changes, if agreed to by the Department, shall not become effective except as specifically set forth by written order of the Commissioner.

VIII. INDEMNIFICATION

Respondent shall indemnify and hold the Department and the State of New York and their representatives, employees, and contractors 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 this Order by the Respondent, its directors, officers, trustees, employees, servants, agents, successors (including successors in title) and assigns.

IX. ENTIRE AGREEMENT

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

X. EFFECTIVE DATE

The Effective Date of this Order is the date on which the Commissioner or the Commissioner's representative signs this Order and shall expire when Respondent has fully complied with the requirements of this Order.

DATED: Ray Brook, New York
_____, 2015

Marc Gerstman, Acting Commissioner
New York State Department of
Environmental Conservation

By: _____
Robert S. Stegemann
Regional Director - Region 5

CONSENT BY RESPONDENT – Reale Construction Co., Inc.

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

Reale Construction Co., Inc., Respondent

By: _____

Its: _____

ACKNOWLEDGMENT

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

On the _____ day of _____, 2015, before me, the undersigned a Notary Public in and for said State, personally appeared _____ to me known, who, being by me duly sworn, did depose and say that she/he resides in _____, New York; that he/she is the _____, of Respondent Reale, 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 she/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

EXHIBIT 1

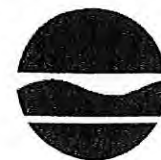
New York State Department of Environmental Conservation

Division of Environmental Permits, Region 5

232 Golf Course Road, Warrensburg, NY 12885

Phone: (518) 623-1281 Fax: (518) 623-3603

Website: www.dec.ny.gov



Joe Martens
Commissioner

January 10, 2013

Mr. Richard Ambuske
New York State Department of Transportation
50 Wolf Road Pod 2-3
Albany, NY 12232

Re: DEC Permit # 5-5226-00172/00001 (Water Quality Certification)
Route 9N Culvert Lining at RM 9N-1702-1350
State Route 9N
Hague (T), Warren (Co.)

Dear Mr. Ambuske:

Enclosed is the DEC Section 401 Water Quality Certification for the above referenced project, issued in accordance with the applicable provisions of the Environmental Conservation Law. Please review all permit conditions, including the natural resources permit conditions that are intended to minimize the environmental disturbance associated with your project. It is the responsibility of the permittee, and their agent, to read and comply with all permit conditions and referenced plans.

This permit is valid only for the activity expressly authorized. Work beyond the scope of the permit will be considered as work without a permit. Failure to comply with these terms may be treated as a violation of the Environmental Conservation Law. Work done under this permit is subject to inspection by DEC staff.

This permit does not eliminate the need to obtain approvals required from other agencies, including the U.S. Army Corps of Engineers (USACE). The USACE contact for your project is Christine Delorier. Ms. Delorier can be reached at (518) 266-6354.

Please feel free to contact Beth Magee of our office at (518) 623-1283 if you have any questions.

Sincerely,

Marc S. Migliore
Deputy Regional Permit Administrator

ec: ECO Lt. Harold Barber
Mike Dauphinais – NYSDEC
Christine Delorier – USACE (NAN-2012-00827)
Lenora Kirby - NYS DOT
Jim Pinheiro – NYSDEC
Tom Saehrig - APA



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
NYS DEPT OF TRANSPORTATION
50 WOLF RD - POD 5-2
ALBANY, NY 12232

Facility:
RT 9N CULVERT LINING
RT 9N - RM 9N-1702-1350
HAGUE, NY 12836

Facility Location: in HAGUE in WARREN COUNTY

Facility Principal Reference Point: NYTM-E: 618.757 NYTM-N: 4835.233
Latitude: 43°39'38.2" Longitude: 73°31'37.7"

Project Location: State Route 9N, at Reference Marker 9N-1702-1350

Authorized Activity: Water quality certification for the slip lining of an existing 3' x 4' x 77.6' concrete box culvert with a 36" x 88' HDPE pipe with cast in place headwalls, wingwalls and aprons; the removal of existing inlet headwall; and the installation of stone aprons. The authorized activities include the installation of temporary water diversion structures or cofferdams. Stone aprons to be installed in the stream channel at the culvert inlet and outlet to prevent scour. All stone installed within the stream channel shall be covered with native stream bed material.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 5-5226-00172/00001

New Permit

Effective Date: 1/10/2013

Expiration Date: No Exp. Date

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: MARC S MIGLIORE, Deputy Regional Permit Administrator
Address: REGION 5 WARRENSBURG SUB-OFFICE
232 GOLF COURSE RD
WARRENSBURG, NY 12885

Authorized Signature: _____

Date 1/10/13



Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITION

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following
Permits: WATER QUALITY CERTIFICATION**

1. **Permit Authorization** This certification authorizes only those regulated activities identified under the section Description of Authorized Activity. This certification does not authorize activities which would have required a certification but for which no certification or other authorization has been granted by DEC.
2. **Prohibition Period for Trout** All instream work, as well as any work that may result in the suspension of sediment, is prohibited during the trout spawning and incubation period commencing October 1 and ending April 30.
3. **Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by NYS DOT and received by the Department; and were determined to be sufficient for an administrative approval. Technical review of subsequent submissions required by Natural Resources Condition #4 may result in changes to permit status.
4. **Submission of Erosion and Sediment Control Plans** At least 72 hours prior to the commencement of construction activities, the permittee or their agent shall submit erosion and sediment control plans to the Department. The submission shall include a certification statement, signed by the permittee, that certifies that the plans were prepared in accordance with the Department's technical standards for erosion and sediment control.
5. **Work Within Area Depicted on Plans** All construction activity, including operation of machinery, excavation, filling, grading, clearing of vegetation, disposal of waste, street paving and stockpiling of material must take place within the project site as depicted on the project plans referenced by this permit. Construction activity is prohibited within areas to be left in a natural condition or areas not designated by the subject permit.
6. **Notice of Intent to Commence Work** The permittee shall submit a Notice of Intent to Commence Work to the Regional Permit Administrator at least 48 hours in advance of the time of commencement and shall also notify him/her promptly in writing of the completion of work.
7. **Post Permit Sign** The permit sign enclosed with this certification shall be posted in a conspicuous location on the worksite and adequately protected from the weather.



8. **Project Supervision** The permittee is responsible for supervising this project, and shall ensure that all necessary measures are employed to prevent environmental degradation and to ensure successful mitigation.

9. **Invasive Species** To prevent the introduction and spread of terrestrial and aquatic invasive species, the permittee must ensure that all construction equipment is cleaned of mud, seeds, vegetation and other debris prior to entering any construction area within or immediately adjacent to waters of the state; including state regulated freshwater wetlands and the associated 100 foot adjacent area. Permittee shall also clean equipment of mud, seeds, vegetation and other debris before leaving any construction site known to harbor invasive species. Wash water and debris shall be sufficiently contained or filtered to prevent reintroduction of materials into any state regulated waterbody or wetland.

10. **Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

11. **No Equipment in the Water Without Prior Approval** Heavy equipment shall not be operated in or from within any water of the state; including state regulated freshwater wetlands and the 100 foot adjacent area; without project specific approval from the Department. However, with backhoes and similar equipment, the bucket may enter the water or wetland and is not considered operation in the water.

12. **Prevent Concrete Wash Waters from Entering Waterbody** Equipment, tools and trucks used in this project shall be cleaned in such a manner as to prevent wash water from entering any stream or lake.

13. **No Interference with Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.

14. **Maintain Water Flow During Work** During periods of work activity, sufficient flow of water shall be maintained at all times to sustain aquatic life downstream.

15. **Use Watertight, Waterproof Forms** Only watertight or waterproof forms shall be used. Wet concrete shall not be poured to displace water within the forms.

16. **Turbid Discharges** Visibly turbid discharges from land clearing, grading or excavation activities, or de-watering operations shall not enter the stream, navigable water, or wetland. Prior to entry into stream, navigable water or wetland, any such discharge shall be:

- a. retained in an appropriately maintained upland settling basin;
- b. filtered through crushed stone, sand, straw bales, silt screening (maximum opening size of U.S. Sieve Number 20), etc.; or,
- c. directed to a grassy upland area a sufficient distance from the stream to prevent change in turbidity of the receiving water.

17. **Clearing of Vegetation** Clearing of natural vegetation shall be limited to that material which poses a hazard or a hindrance to the construction activity.



18. Install and Maintain Erosion and Sediment Controls Before any soil is disturbed on the project site, the permittee shall install erosion and sediment control measures which are adequate to prevent erosion and off-site sedimentation and designed in conformance with the DEC's technical standards. Such controls shall be properly maintained until the unpaved portions of subject site, if any, are stabilized by a self-sustaining cover of vegetation that is adequate to prevent erosion and off-site sedimentation. Before such controls are removed, the permittee shall remove all sediment that has accumulated at such controls.

19. Storage of Materials Soil and/or excavated materials may not be stored on top of stream banks, where materials could erode into the stream or cause the bank to collapse.

20. Soil Stabilization All areas of soil disturbance (above the mean high water line) resulting from this project shall be seeded with an appropriate perennial grass seed and mulched within one week of final grading. Stabilization measures shall be monitored throughout the course of the project. Seed and mulch shall be reapplied, as needed, to ensure adequate vegetative cover on all disturbed soils.

21. Temporary Soil Stabilization If seeding is impracticable due to the time of year, a temporary mulch; such as a rolled erosion control product or straw; shall be applied to all disturbed soils. Final seeding shall be performed at the earliest opportunity when weather conditions favor germination and growth but not more than six months after project completion.

22. Turbidity Curtain A turbidity curtain, weighted across the bottom and suspended by continuous floats, shall be installed in the waterbody to surround the work site prior to the commencement of any in-water work. The curtain shall be sufficiently weighted and of sufficient length to maintain continuous contact with the stream/lake bottom during all flows. The curtain shall remain in place until all in-water work has been completed, all adjacent disturbed areas are properly stabilized and turbidity within the work area does not exceed that of natural conditions.

23. Cofferdam Any temporary cofferdam shall be constructed of materials such as sheet piling, sandbags or clean gravel that will not contribute to turbidity or siltation of the waterbody.

24. Sandbags Sandbags shall be of the filter fabric type, double bagged and individually tied to prevent sand leakage. They shall be placed and removed manually to prevent spillage. Only clean sand, free of debris, silt, fine particles, or other foreign substances shall be used to fill the bags. All bags shall be filled at an upland site where spillage will not enter the water, and all sand stored on-site shall be surrounded by straw bales or covered with a tarp to prevent erosion of the sand into the water.

25. Dewatering Within Cofferdam Dewatering within the coffer(s) shall be performed so as to minimize siltation and turbidity. Water taken from the coffered area will be passed through settling basins, filter material or other accepted devices to prevent the discharge of turbid water into any waterbody. All fish trapped within the cofferdam during the dewatering process shall be returned, alive and unharmed, to the water outside the confines of the cofferdam.

26. Settling of Sediments Within Cofferdam The cofferdam shall remain in place until the water clarity in the coffered area matches the open water.

27. Clean Fill Only All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, flyash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. The introduction of materials toxic to aquatic life is expressly prohibited.



28. **No Rock From Stream/Lake** No rock for use in construction is to come from the stream or lake bed.

29. **Temporary Crossing to Be Removed and Restored** Immediately following project completion or by the expiration of the permit, whichever comes first, any temporary crossing is to be completely removed, and the disturbed areas are to be returned to pre- project conditions and are to be stabilized by seeding and mulching with straw.

30. **Grade to Conform with Adjacent Area** The work area shall be graded to conform with the elevation and contours of the undisturbed land immediately adjacent to the work area.

31. **Consolidation of Armor Stone Prohibited** Armor stone may not be consolidated with concrete or by any other means.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. **Water Quality Certification** The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. **Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. **Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. **Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires.



Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
REGION 5 WARRENSBURG SUB-OFFICE
232 GOLF COURSE RD
WARRENSBURG, NY 12885

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS
--

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.



Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

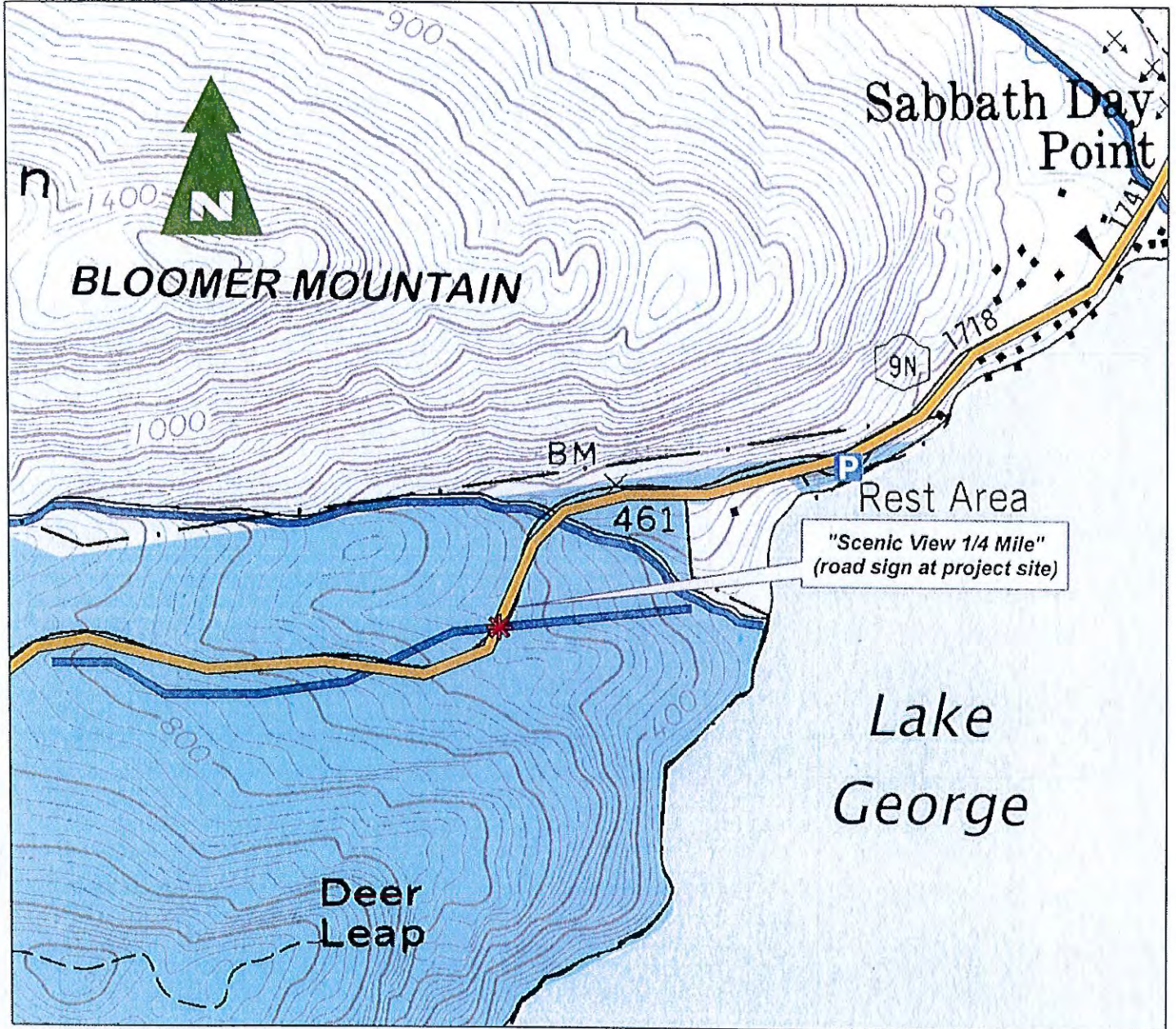
Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

PIN 1808.44: Rt 9N Culvert Lining
Town of Hague, Warren County



PCN Attachment B: Project Location

Elevation: 545'

Decimal Degrees: -73.52709 42.660654

Longitude: 73°31'37.75"West

Latitude: 43°39'38.27"North

*** PROJECT SITE: RM 9N-1702-1350**
(reference markers are on ground under guiderail)

RECEIVED
JUL 19 2012
NYSDC-PERMITS
REGION 5 - WARRENSBURG

- Parking Area
- DEC FOREST PRESERVE
- Rt 9N: Lake George Loop Proposed Scenic Byway
- DEC Regulated Streams class AA-S, standard AA-S

0 0.125 0.25 0.5 Miles

Scale: 1:8750 - Ik 7/26/11

EXHIBIT 2

NOTICE OF VIOLATION

Call for Service #: 14-009831

UT-50 # _____

TO: Michael Reale
Address: Reale Construction Co
11 Conderoag

In Violation of
Section 71-4001 Sub _____

A description of which is:
Violating terms or conditions
of a NYS DEC Permit

Which occurred at:
Spring Hill Brook
HAGUE NY

YOU ARE HEREBY DIRECTED TO APPEAR or CONTACT:
Scott Abrahamson

ON 6/19/14 2014 at 2:00 M

Officer's name: Lt. John Althaus
Badge #: 172

PLEASE TAKE NOTICE, that you are in violation of provisions of the New York State Environmental Conservation Law (ECL) and/or Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) as described above. You have the right to an administrative hearing if you wish to contest the(se) violation(s). You may seek to settle this matter by appearing/contacting the Department of Environmental Conservation (DEC) as directed above. If you fail to appear/contact the DEC as directed, this may result in the commencement of a formal administrative enforcement proceeding seeking a civil penalty/fine up to the maximum allowed by law, together with any other relief allowed by law.

SUPERVISOR