



LICENSE REVOCATION ORDER

NAME AND ADDRESS OF RESPONDENT

HEARING DATA

Jeffrey T. Drilling
[REDACTED]
[REDACTED]
[REDACTED]

Name of Hearing Officer:

Richard A. Sherman
Environmental Impact Examiner
(Administrative Law Judge)

Date and Time of Hearing:

Wednesday, June 19, 2013 at 9:00 A.M.

Revocation Period Begins: 9/23/2013

Revocation Period Ends: 9/23/2015

INCIDENT DATA

Licenses Revoked: Hunting and Trapping

Victim:

[REDACTED] (Property Owners)

Call For Service #:

11-021807

Date of Incident:

12/06/2011

In the matter of the revocation of the **hunting and trapping** licenses, and all of the rights and privileges associated therewith of the individual identified above and hereinafter known as the Respondent;

On the date, time and location indicated, the entitled matter was heard by the above named Hearing Officer, and decided by the undersigned duly designated by the Commissioner of the Department of Environmental Conservation pursuant to Section 11-0719 of the New York State Environmental Conservation Law.

Further, having been established that a Notice of Hearing and Complaint was served upon the Respondent, with the Respondent having **appeared** at the hearing, all other persons having had the opportunity to testify and present evidence and upon submission of the Hearing Record, the Hearing Report, Findings & Recommendation, and Final Decision establishing that the Respondent did on the date of incident stated above while engaged in **hunting so negligently and wantonly discharged a firearm as to destroy or damage private property in violation of ECL § 11-0719(2)(a)(1)(iii)**, specifically, on December 6, 2011, respondent did negligently and wantonly discharge a firearm while hunting big game striking a house located at [REDACTED], New York, it is, upon the record of these proceedings:

ORDERED AND DIRECTED, that any **hunting, bowhunting, and trapping** licenses, carcass tags, stamps and permits currently held by the Respondent are hereby revoked and now void, and the Respondent is ordered and declared to be ineligible to hold such licenses, carcass tags, stamps and permits and is ineligible to **hunt or trap** without a license until the revocation period in this Order ends and Respondent has fully satisfied all of the provisions of this Order and all other licensing requirements, and it is further,

ORDERED AND DIRECTED, that the revocation and ineligibility herein above set forth, shall be entered in the minutes of the New York State Department of Environmental Conservation, and that a written notice thereof be forthwith served upon the Respondent by certified mail, return receipt requested, or by personal service by a representative of the New York State Department of Environmental Conservation, and it is further,

ORDERED AND DIRECTED, as provided in said Section that within five days after the service of the order and notice upon the Respondent, that the Respondent deliver to the Department of Environmental Conservation, Albany, New York, any and all **hunting, bowhunting, and trapping** licenses, carcass tags and permits issued to the Respondent for the current license year, together with any button or stamp associated with **hunting, bowhunting, and trapping**, and it is further,

ORDERED AND DIRECTED, that in addition to completing the entire revocation time period the Respondent must successfully complete a Department-sponsored course and obtain a certificate of qualification in responsible **hunting, trapping, and bowhunting** practices before being issued another **hunting, bowhunting, or trapping** license. Therefore, the Respondent should successfully complete a Department-sponsored course and submit a certificate of qualification in responsible **hunting, trapping, and bowhunting** practices to the Department during the revocation period. The certificate of qualification should be sent to the following address within 10 days from the date the certificate was issued: New York State Department of Environmental Conservation, Division of Law Enforcement, License Revocation Section, 625 Broadway, 3rd Floor, Albany, N.Y. 12233. It is further,

ORDERED AND DIRECTED, that if the Respondent fails to comply with any provision of this Revocation Order, the Respondent will become subject to the penalties prescribed by law in such cases.

/s/

Date

/s/

Col. Walter G. Heinrich
Commissioner's Designee for
Sportsman License Revocation Hearings

Revocation or Suspension of Licenses pursuant to Interstate Wildlife Violator Compact

Effective March 1, 2006, New York State joined the Interstate Wildlife Violator Compact (IWVC). The IWVC is a compact under which member states reciprocate regarding the suspension or revocation of licenses and permits resulting from violations concerning the pursuit, possession or taking of mammals, birds, fish, reptiles, amphibians, mollusks, shellfish and crustaceans.

If a person's license or permit privileges which come under the scope of the IWVC are suspended or revoked in one member state, they are subject to suspension or revocation in all member states. In addition to license and permit suspensions and revocations which result from a conviction for the illegal pursuit, possession or taking of mammals, birds, fish, reptiles, amphibians, mollusks, shellfish and crustaceans, failing to appear in court or to otherwise answer a ticket or summons issued for such violations will also result in license or permit suspension. IWVC member states also agree to recognize convictions and/or civil and administrative settlements for violations within the scope of the IWVC which occur in all other member states and to apply them toward license and permit suspension and revocations in the state in which the person resides. For a complete list of IWVC member states, please call DEC's Division of Law Enforcement at **518-402-8816**.

**New York State Department of Environmental Conservation
Hunting Related Shooting Incident (HRSI) License Revocation Hearing
Hearing Report, Findings & Recommendations, and Final Decision**

**In the Matter of the Alleged Violation of Article 11
of the New York State Environmental Law (ECL) by:**

Name	Jeffrey T. Drilling (Respondent)	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	Matter of Drilling	Call for Service #	11-021807
Case No.:	11-021807		
On (Date):	12/06/11	Victim (Name):	[REDACTED]
Was (check one):	Injured <input type="checkbox"/> ; Killed <input type="checkbox"/> ; or had Property Damaged <input checked="" type="checkbox"/>		
Description of Nature of Injury or Property Damaged:	Broken window and screen on second floor of private residence		
By (Name of Responsible Party):	Jeffrey T. Drilling		
Location:	Town of	[REDACTED]	County of Erie

This incident occurred while the Respondent and/or Victim were engaged in the following hunting activity (specify):

Deer hunting

This hearing was held at the Office of the New York State Department of Environmental Conservation located at (address):

270 Michigan Avenue, Buffalo, NY

at (time):	9:00 a.m.	on (date):	06/19/13 (On 07/11/13 I advised the parties that the hearing record was closed. The record had been held open to receive a post-hearing motion from respondent, but respondent failed to file the motion within the prescribed time.)
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Designated Hearing Officer Name and Title:	Richard A. Sherman Environmental Impact Examiner (Administrative Law Judge)
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Petitioning Officer Rank, Name, & Shield	Lt. James R. Schultz
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Respondent did not waive his/her right to this hearing.

APPEARANCES:

Respondent did appear for this hearing.

Victim(s)

Victim did appear for this hearing. List name(s) and address(es) of victim:

Witness(es)

List name(s) and address(es) of witness(es) present at this hearing:

ECO Michael S. Phelps, NYSDEC, Region 9
[REDACTED]

ECO Charles Wilson, NYSDEC, Region 9

Lt. James R. Schultz, NYSDEC, Region 9
[REDACTED]

Jeffrey T. Drilling, [REDACTED]

Others Present At Hearing

List name(s) and address(es) of others present at this hearing:

Maureen A. Brady, Esq., Regional Attorney, NYSDEC Region 9
[REDACTED]

Mary E. Black, Court Reporter, Jack W. Hunt & Associates, 1420 Liberty Building, Buffalo, NY

Firearm/Weapon Pertaining To The Hunting Related Shooting Incident

Make	Savage	Gauge/Caliber	20 Gauge
Model	220 Bolt Action	Owned by:	Jeffrey T. Drilling
Serial #	G973388	Possessed by	Jeffrey T. Drilling

Exhibit List

1. DEC Hunting Related Shooting Investigation File:
 - 1-A. Site photographs (taken 12/07/11 – 12/09/11)
 - 1-B. Victim statement [REDACTED]
 - 1-C. Victim statement [REDACTED]
 - 1-D. Call for Service Report #11-021807
 - 1-E. Witness statement [REDACTED], taken 03/02/12)
 - 1-F. Hunting Related Shooting Investigation Report (signed 12/12/12 by ECO Michael Phelps)
 - 1-G. Aerial photograph, Erie County On-line Mapping System (with approximate locations of relevant points noted)
 - 1-H. Respondent statement (12/07/11)
2. Bullet (recovered from floor of second floor bedroom at victims' residence).
3. Three 20 gauge shotgun shell casings (recovered from respondent's hunting blind).
4. Two live 20 gauge shotgun shells.
5. Subpoena for, and Certified Copy of, Erie County Central Police Services Forensic Laboratory records (includes report on analysis of bullet and shell casings collected at site and test fired ammunition).
6. Four 20 gauge shotgun shell casings and one live 20 gauge shotgun shell.
7. Copy of "The Ten Commandments of Firearm Safety" from the DEC Hunting and Trapping Guide.
8. Box of Hornady muzzleloading 50 caliber sabot bullets.

9. Email communication between respondent and Hornady Manufacturing Co. confirming that the same bullet is used in the 20 gauge shotgun sabot and 50 caliber muzzleloading sabot.

10. Aerial Photograph (from Pictometry website). Note: exhibit received only for use in respondent's testimony concerning location of relevant points at site, information regarding elevations was not received in evidence.

Office of Hearings Exhibits:

A. Copy of Delegation of Authority; Division of Law Enforcement Employees to Revoke Licenses and Conduct Hearings.

B. Copy of Delegation of Authority; Chief Administrative Law Judge, Hearings Counsel, and Administrative Law Judges.

C. Copy of Hunting Related Shooting Hearing Notice and Complaint addressed to respondent: Jeffrey T. Drilling.

D. Copy of Hearing Notice from OHMS to the parties.

Transcript

The hearing was stenographically recorded.

Synopsis of Incident from Testimony, Documents, and Evidence

The synopsis rendered by me in this matter is based upon my review of the documents and evidence referenced above and the testimony of those present during the hearing held on the above date and time:

At approximately 3:30 p.m. on 12/06/11 respondent discharged his shotgun three times while hunting deer. Only one round was recovered by respondent. Respondent's targets were two deer near the southeast corner of an open field approximately 160 feet north of his position. Respondent fired his shotgun in a northerly direction from a hunting blind which was located on a small hill in a wooded area south of the field. One deer was hit and recovered by respondent.

The victims' residence, which is approximately 887 feet from where respondent discharged his firearm, was struck by one of respondent's bullets. The bullet came to rest on the floor of a bedroom on the second floor of the residence after penetrating a window. The path of the bullet is unknown.

Findings, Conclusions of Law, and Recommendations of the Hearing Officer

FINDINGS: The findings, including any findings of negligence or negligence and wantonness or lack thereof (as the case may be), on the part of the Respondent, by this Hearing Officer, are based upon the preponderance of the testimony, documents, and evidence presented during the hearing and held on the above date and time (see 6 NYCRR 622.11[c]), unless this report notes a Default Judgment without hearing in which case the findings are based solely on the documents and evidence listed in this Report.

- 1. On 12/06/11 a second floor, south facing, bedroom window at the victims' residence (residence), [REDACTED] was struck by a bullet. The bullet penetrated the window screen and glass, and came to rest on the bedroom floor.**
- 2. The bullet recovered from the residence was fired by respondent from his Savage 220 bolt-action shotgun.**
- 3. At the time of the incident, respondent was hunting deer from a blind (hunting blind) located on a small hill in a wooded area on a parcel owned by respondent.**
- 4. Respondent's targets were two deer located near the southeast corner of an open field, approximately 160 feet north of, and at a slightly lower elevation than, respondent's hunting blind. The field is not owned by respondent, but respondent had the owner's permission to hunt there.**
- 5. The residence is approximately 887 feet north of where the hunting blind was located.**

6. A raised railroad on a berm of unknown elevation runs generally east-west and perpendicular to the direction of respondent's line of fire, approximately midway between the location of the hunting blind and the residence.

7. Respondent is familiar with the target environment north of his hunting blind, including the location of the railroad berm, the residence that was struck and other residences in the area.

DISCUSSION: Including a discussion of the standards of negligence, or negligence and wantonness (as the case may be).

Department staff must show, by a preponderance of the evidence, that respondent "so negligently and wantonly" discharged his firearm while hunting that he caused damage to private property (ECL 11-0719[2][a][1][iii]). As noted in the findings of fact, I have found that respondent discharged his firearm while hunting and caused damage to the residence. However, I conclude that staff did not establish that respondent's actions were negligent and wanton.

At hearing, staff quoted the definition of "negligence" from Black's Law Dictionary (transcript [tr] at 263-264) and argued that "the decision [respondent] made to shoot in this direction [i.e., toward the residence] was negligent" (tr at 266). However, staff did not articulate a standard for what constitutes "negligently and wantonly" in the context of this proceeding.

New York courts have held that wantonness is "'an aggravated form of negligence' indicating that 'the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow'" (*Metropolitan Life Ins. Co. v Noble Lowndes Intl.*, 192 AD2d 83, 90 [1st Dept 1993] [quoting Prosser, Torts § 34, at 184, 185 (4th ed)], *affd* 84 NY2d 430, *rearg denied* 84 NY2d 1008; *see also Master Cars, Inc. v Walters*, 267 AD2d 942, 942-943 [4th Dept 1999] [quoting *Metropolitan Life*], *affd* 95 NY2d 395; *Matter of Jenson v Fletcher*, 277 AD 454, 457-459 [4th Dept 1950], *affd* 303 NY 639).

In support of its case, Department staff proffered a document entitled "The Ten Commandments of Firearm Safety" (exhibit 7). The third "commandment" is the most relevant to the circumstances here. It pertains to a hunter's responsibility to know the target environment and reads, in part, "Be sure of the target and what is in front of it and beyond it . . . Make sure you have an adequate backstop – don't shoot at a flat, hard surface or water."

Respondent testified that, on the date of the incident, he was hunting deer and that he was aware of his surroundings and the target environment. Respondent stated that (i) he was shooting from his hunting blind on a small hill in a wooded area; (ii) his targets (two deer) were at a lower elevation and to the north of his blind, near the southeast corner of an open, muddy field; (iii) he believed that, if he missed his target, the bullet would lodge in the field behind the deer; (iv) he believed that a railroad berm, located along the far north edge of the field where his targets stood, would act as a backstop; (v) the crest of the railroad berm is at or above the elevation of his hunting blind; and (vi) he was aware that there were, and he had obstructed views of, residences located beyond the railroad berm (tr at 202-205, 218-222, 240-241). Respondent's description of the target environment is largely uncontroverted (*see e.g.* tr at 33-35, 89; exhibits 1-A at 2, 1-F at 7, 1-G).

There is a dispute between the parties over the precise direction of respondent's shot. Respondent testified that he shot at a downward angle, that his line of fire was toward a wooded area on the east side of the field, and that the residence that was struck was to the west of his line of fire (tr at 201-202, 204, 211; exhibit 1-A at 2 [photographs marked by respondent to indicate the location of the deer]; *see also* tr at 47). Department staff testified that, to hit a second story window of a structure nearly 900 feet away, respondent "either . . . shot a high round or the round ricocheted off the ground" (tr at 51). Staff also asserted that respondent's line of fire was directly in line with the residence that was struck (tr at 56-57; exhibit 1-F at 7 [indentifying the "Bullet Path"]).

I conclude that respondent chose his line of fire poorly. Once discharged, a projectile is uncontrollable

and its path may be affected by many variables, such as ricochets off branches, rocks or other material. Although respondent's discharge of his firearm was largely in conformance with the third commandment of firearm safety (i.e., he knew his target, he did not shoot into a "hard surface or water," and he believed he had an adequate backstop), respondent could have, and should have, selected a different line of fire. Here, respondent's shot, whether errant or a ricochet, struck a residence. Nevertheless, his assessment of the target environment and his decision to discharge his firearm do not reflect "disregard of a risk . . . so great as to make it highly probable that harm would follow" (*Metropolitan Life Ins. Co.*, 192 AD2d at 90).

On this record, I conclude that staff failed to demonstrate by a preponderance of the evidence that respondent acted "negligently and wantonly" when he discharged his firearm and caused damage to the residence.

CONCLUSIONS OF LAW: The following are the Hearing Officer's conclusions of law concerning the violations established on the record of the hearing.

Respondent did not negligently and wantonly discharge his firearm.

RECOMMENDATIONS: The following are this Hearing Officer's recommendations concerning the revocation of the respondent's sporting license and are subject to review by the Commissioner or the Commissioner's Designee for Sporting License Revocations.

Respondent's hunting license should not be revoked.

Hearing Officer's Name:	Richard A. Sherman	Title:	Environmental Impact Examiner (Administrative Law Judge)
Signature:		Date:	08/30/13

Central Office Review and Decision Regarding Sporting License Revocation

Upon review of the entire hearing record, I adopt the hearing report of the Administrative Law Judge (ALJ) in part. Specifically, I adopt the ALJ's findings of fact. I agree that Department staff established, by a preponderance of the record evidence, that the bullet that struck the victims' residence was fired by respondent Jeffrey T. Drilling from his Savage 220 bolt-action shotgun while hunting on December 6, 2011.

However, I disagree with the ALJ's conclusions of law and recommendation. For the reasons that follow, I conclude that respondent Jeffrey T. Drilling "negligently and wantonly" discharged his firearm while hunting and caused damage to a private residence in violation of ECL 11-0719(2)(a)(1)(iii). Accordingly, I conclude that respondent's hunting privileges should be revoked for a period of two years.

ECL 11-0719 authorizes the Department to suspend or revoke the sporting licenses of, and deny the privilege of obtaining a sporting license to, any person who, while engaged in hunting or trapping, "negligently and wantonly" discharges a firearm or longbow so as to destroy or damage public or private property (ECL 11-0719[2][a][1][iii]). In such a case, the hunter's sporting licenses may be revoked and hunting privileges may be suspended for up to five years (see ECL 11-0719[2][c]).

To determine whether a hunter "negligently and wantonly" discharged a firearm while hunting, the Department applies the "reckless disregard for the safety of others" standard of care (see e.g. Marra v New York Cent. & Hudson R.R. Co., 139 AD 707, 710 [2d Dept 1910] [wanton action is the reckless disregard of right or consequence]; Prosser & Keeton, Torts § 34 at 212-213 [5th ed 1984]). Under that standard, the evidence must show that the hunter "has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow' and has done so with conscious indifference to the outcome" (Saarinan v Kerr, 84 NY2d 494, 501 [1994] [quoting Prosser & Keeton § 34 at 213]; see also Restatement [Second] of Torts § 500).

The "reckless disregard" standard is an objective one (see Prosser & Keeton § 34 at 213; Restatement [Second] of Torts § 500, Comment a). Thus, a hunter will be found to be reckless where the hunter, whatever his or her subjective state of mind, has proceeded in disregard of a high and excessive degree of danger, either known to the hunter or apparent to a reasonable person in the hunter's position (see id.). Generally, the principles taught at the Department's Sportsman Education courses are the measure of the appropriate care or judgment a reasonable hunter is responsible to exercise as well as the consequences of failing to exercise such care when discharging a firearm.

Based upon my review of the hearing record, I conclude that Department staff proved, by a preponderance of the record evidence, that respondent discharged his firearm in reckless disregard of an excessive risk of harm to life or property. The record reveals that two residences -- both that of the victims' [REDACTED] and another homeowner [REDACTED] -- were directly down range and would be in a direct line of shot from respondent's blind. A railroad track and a public road were also down range and in a direct line of shot. The residences, the railroad, and the public road were all well within range of respondent's shots. The record further reveals that when respondent fired the three shots at the deer, the shots were in the direction of the residences, the railroad, and the public road (see e.g. photo, zoom view,

hearing exhibit 1-A; aerial photo, hearing exhibit 1-G).

Respondent conceded that he was aware of the houses, the railroad, and the public road, and that the residences were visible from the blind. However, he stated that he believed the railroad grade provided an adequate backstop for the shots he took. Respondent's subjective belief, however, was not reasonable. The record establishes that the residences were visible over the railroad grade, both from respondent's blind and from the field in which the deer were located. Thus, the railroad grade provided an insufficient backstop to protect the residences from any errant or ricocheting shots fired from respondent's location. Indeed, respondent agreed that the railroad grade was not the "ultimate backstop" to prevent a projectile from reaching the victims' house (see Drilling testimony, hearing transcript at 236).

By firing in the direction of known and visible residences, a railroad track, and a public road, without an adequate backstop, respondent violated a basic rule of hunting and firearm safety -- knowing what is beyond the target and making sure one has an adequate backstop (see hearing exhibit 7). A reasonably prudent hunter does not discharge a weapon in the direction of a residence or public highway due to the substantial risk that an errant shot may cause death or injury to persons or property down range (see e.g. Matter of Bullock, License Revocation Order, May 5, 2011, at 5; Matter of Lefort, License Revocation Order, Feb. 10, 2004, 4th unnumbered page). Respondent's own witness testified that one should never shoot in line with a visible house (see [REDACTED] testimony, hearing transcript at 172, 192). Indeed, respondent's witness could not conclude that respondent's shot was safe (see id. at 170-175).

Thus, under the circumstances presented here, respondent discharged his firearm in reckless disregard of the safety and property of others. Accordingly, I conclude that on December 6, 2011, respondent Jeffrey T. Drilling "negligently and wantonly" discharged his firearm while hunting and caused damage to a private residence in violation of ECL 11-0719(2)(a)(1)(iii).

As a consequence of the violation, respondent's hunting and trapping licenses and privileges shall be revoked for two years. Respondent shall also be required to successfully complete a Department-sponsored sportsman education course and obtain the associated certificate of qualification before being issued another license.

The sporting license privileges of the responsible party should be revoked: Yes No

Sporting licenses subject to revocation: Hunting Trapping

Length and Terms of Revocation:

Two (2) years. Respondent Drilling to successfully complete a Department-sponsored sportsman education course and obtain the associated certificate of qualification before being issued another license.

Commissioner or Commissioner's Designee: Col. Walter Heinrich

Signature:	/s/	Shield #	193	Date:	9/23/13
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