



LICENSE REVOCATION ORDER

NAME AND ADDRESS OF RESPONDENT

Ronnie E. Fuller
[REDACTED]
[REDACTED]
[REDACTED]

Revocation Period Begins: 6/6/2014
Revocation Period Ends: 6/6/2019

Licenses Revoked: Hunting

HEARING DATA

Name of Hearing Officer:
Richard A. Sherman
Environmental Impact Examiner
(Administrative Law Judge)

Date and Time of Hearing:
Tuesday, May 13, 2014, at 9:50 A.M.

INCIDENT DATA

Victims:
[REDACTED]
(Property Owners)

Call For Service #: 13-018591

Date of Incident: November 16, 2013

In the matter of the revocation of the **hunting** 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 decided by the above named Hearing Officer, 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, Report and Recommendation establishing that the Respondent did on the date of incident stated above while engaged in **hunting, so negligently and wantonly discharge a firearm as to destroy or damage private property in violation of ECL § 11-0719(2)(a)(1)(iii)**, specifically, on November 16, 2013, while hunting deer, Respondent did negligently and wantonly discharge a firearm and struck a residence located at [REDACTED], it is, upon the record of these proceedings:

ORDERED AND DIRECTED, that any **hunting** 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** 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** licenses, carcass tags and permits issued to the Respondent for the current license year, together with any button or stamp associated with **hunting**, 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** practices **before** being issued another **hunting** license. Therefore, the Respondent should successfully complete a Department-sponsored course and submit a certificate of qualification in responsible **hunting** 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.

June 6, 2014

Date

/s/

**Timothy A. Duffy, Director
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	Ronnie E. Fuller	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	Matter of Fuller	Call for Service #	13-018591
Case No.:	13-018591		
On (Date):	11/16/13	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:	Small, shallow hole and minor splintering in wood siding of a private residence.		
By (Name of Responsible Party):	Ronnie E. Fuller		
Location:	Town of	Maine	County of Broome

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):

615 Erie Boulevard West, Syracuse, NY

at (time): 9:50 a.m. **on (date):** 05/13/14

Designated Hearing Officer Name and Title: Richard A. Sherman
Environmental Impact Examiner
(Administrative Law Judge)

Petitioning Officer Rank, Name, & Shield Lt. Ric Warner

Respondent did not waive his/her right to this hearing.

APPEARANCES:

Respondent did appear for this hearing.

Victim(s)

Victim did not appear for this hearing. List name(s) and address(es) of victim:

[REDACTED]

Witness(es)

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

ECO Andrew J. McCormick, NYSDEC, Region 7
Lt. Ric Warner, NYSDEC, Region 7
Ronnie E. Fuller, [REDACTED]

Others Present At Hearing

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

Lt. James Reitmeier, NYSDEC, Region 7
Amy Osterstruck, Court Reporter, Verbatim Court Reporting Service, 224 William St., Elmira, NY

Firearm/Weapon Pertaining To The Hunting Related Shooting Incident

Make	Ithaca	Gauge/Caliber	12 Gauge
Model	37 Featherlight	Owned by:	Ronnie E. Fuller
Serial #	371566571	Possessed by	Ronnie E. Fuller

Exhibit List

1. DEC Bednar-Fuller Property Damage HRSI Case Report:
 - 1A. Respondent statement (11/17/13)
 - 1B. Hunting Related Shooting Investigation Report (signed 12/19/13 by ECO Andrew McCormick)
 - 1C. Victim statement [REDACTED]
 - 1D. Witness statement ([REDACTED])
 - 1E. Site photographs (taken 11/16/13)
 - 1F. Report of Hunting Incident (signed on 11/17/13 by respondent)
2. Slug (recovered from siding of victims' residence) and shell casing (recovered from shooter's position at time of incident). This exhibit was left in the custody of Region 7 Division of Law Enforcement.
3. New York Hunting & Trapping, 2013-14 Official Guide to Laws & Regulations (Vol. 6, Issue No. 1, Oct. 2013).

Office of Hearings Exhibits:

- A. Copy of Hunting Related Shooting Incident Hearing Notice and Complaint, dated 03/4/14, addressed to respondent, Ronnie E. Fuller.
- B. Copy of Hearing Notice, dated 05/02/14, 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 7:50 a.m. on 11/16/13 respondent discharged his shotgun one time. At the time of the discharge, respondent was hunting deer in a wooded area south of [REDACTED] in the Town of Maine. His target was a deer to the north of his location. There is no evidence indicating that respondent's shot hit the deer. The victims' residence, which is approximately 660 feet from where respondent discharged his firearm, was struck by the slug from respondent's shotgun. The residence is located on the east side of [REDACTED]. The slug was recovered from the wood siding on the south face of the residence.

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. At approximately 7:50 a.m. on 11/16/13, a shotgun slug struck the south face of the victims' residence, [REDACTED] causing damage to the wood siding of the structure.
2. The slug that struck the residence was fired by respondent from his Ithaca Model 37 Featherlight 12 gauge shotgun, while he was hunting deer.
3. At the time of the incident, respondent was located in a wooded area approximately 660' from, and nearly directly south of, the victims' residence.
4. The wooded area extends less than 300' north of respondent's position. The remaining distance between respondent's location and the victims' residence is mostly open field.
5. Respondent's target was a deer located within the wooded area to the north of his position. The distance between respondent and his target is not established in the record.
6. Respondent's sight lines to the residences north of his position were mostly obstructed by trees, but he was aware that there were houses to his north, in the vicinity of [REDACTED].
7. [REDACTED] runs north-south. It is a short dead-end road that intersects [REDACTED] on its north end and dead-ends near the woods where respondent was hunting on its south end.
8. Aside from trees and other vegetation, there was no backstop behind the target deer.

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

Department staff must prove, by a preponderance of the evidence, that respondent "negligently and wantonly discharge[d] a firearm" while hunting and, thereby, "destroy[ed] or damage[d] . . . private property" (ECL 11-0719[2][a][1][iii]). As discussed below, I conclude that staff met its burden of proof and has established that respondent's actions warrant revocation of his hunting and trapping licenses.

Respondent testified that it may not have been his shot that struck the victims' residence (see transcript [tr] at 53-56, 72). In a supporting deposition, dated November 17, 2013, respondent stated that he "heard some gunshots up the hill from [his location], closer to [REDACTED]" shortly before he spotted the deer and discharged his shotgun (exhibit 1A at 1). Respondent testified that he heard two shots nearby and to the northwest of his position just prior to discharging his firearm (tr 53-54). He also stated that he heard someone honking a car horn and shouting almost immediately after he discharged his shotgun (tr at 47; see also exhibit 1A at 1). Respondent argues that it may have been one of the two shots that were fired by a nearby hunter that struck the house (tr at 75-76).

The slug that struck the victims' residence hit the south face of the structure (exhibit 1B at 1 [item 36], 6). The damage pattern indicates the slug hit the structure at or near dead-on (i.e., the line of fire was at or near perpendicular to the south face of the residence) (see exhibit 1-E [photographs S-1, S-2 (showing the slug at the center of the impact damage)]; tr at 43). Statements from two witnesses indicate that the damage to the residence resulted from the discharge of a shotgun close by and to the south of the residence. One of the victims stated that he "heard a loud gunfire and an instant loud impact" on the side of his residence, he ran outside, saw the damage, and "immediately . . . drove down to the woods entrance (i.e., the dead-end of [REDACTED])" to find the hunter (exhibit 1-C). The victims' neighbor from across the street stated that he "heard a single gunshot that was very close" and "the shot sounded like it came from the dead-end of [REDACTED]" (exhibit 1-D).

The physical evidence and witness statements support Department staff's position that the shot was fired by respondent. As noted above, respondent himself states that the other hunters were up the hill and closer to [REDACTED]. Had a shot from one of these hunters hit the victims' home, it would have hit the south face of the structure at an angle, rather than dead-on. Other witness statements make clear that the damage to the residence resulted from a single shot, discharged close to the victims' home, and from the direction of the dead-end of [REDACTED]. That is the location from which respondent discharged a single shot from his firearm. On this record, staff has met its burden to demonstrate that the slug recovered from the victims' home was fired by respondent.

With regard to whether respondent's actions were wanton, 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 [2004]; see also Master Cars, Inc. v Walters, 267 AD2d 942, 942-943 [4th Dept 1999] [quoting Metropolitan Life], *affd* 95 NY2d 395 [2000]).

At the time of the incident, respondent was approximately 660' due south of the victims' residence, hunting deer in a forested area (tr at 21, 40; exhibits 1B at 6, 1F at 3). Respondent testified that he was seated next to a tree, with his back toward ██████████, when he heard shots fired to the northwest of his position (tr at 53-54). He turned to the northwest, heard a deer snort, and spotted the deer to the north of his position (*id.* at 55). Respondent testified that he pivoted on his knees toward the deer and discharged his shotgun (*id.* at 53-54). He further testified that he is certain that he did not pivot fully to the point where his shot would have been directed at the victims' residence (*id.* at 55-56).

Respondent is a longtime hunter and is familiar with the area where he was hunting (tr at 53). Despite the fact that he was fully aware that there were residences nearby to his north (tr at 59-60), he shot in a northerly direction without knowing the precise location of the residences relative to his position (exhibit 1A at 2 [respondent's statement that "from the location [he] was sitting [he] could not see any of the houses on ██████████"]; but see tr at 32-33, 40 [staff testimony that the houses were partially visible]). Notably, there are residences to the west of the victims' residence on ██████████ (exhibit 1, tab 6 [aerial photograph]). Therefore, as respondent pivoted toward the north, his line of fire would have swept past these other residences before reaching a direct line to the victims' residence. In respondent's sketch of the scene, drawn the day after the incident, respondent depicts the target deer in nearly a direct line with the location of the residences on the west side of ██████████ (exhibit 1F [Report of Hunting Incident] at 3). Significantly, respondent does not assert that there was an adequate backstop beyond the target deer, and staff testified that there was not (tr at 31-32).

Respondent's actions plainly violate the third of the "10 commandments of firearm safety," which are taught in New York State hunter safety courses. The third commandment states that, as a hunter, you must "be sure of your target and what is . . . beyond" and "[m]ake sure you have an adequate backstop" (exhibit 3 at 21). There was not an adequate backstop and respondent admits that he did not visually locate the residences beyond his target before discharging his shotgun.

Respondent's discharge of his firearm under the circumstances present here demonstrates a wanton disregard for the consequences of his action.

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

Respondent, while hunting deer, negligently and wantonly discharged his shotgun and, thereby, caused damage to a private residence located at ██████████

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.

I recommend that respondent's hunting and trapping licenses be revoked for 5 years and that respondent complete a Department-sponsored sportsman education course and obtain the associated certificate of qualification before being issued another license.

Hearing Officer's Name:	Richard A. Sherman	Title:	Environmental Impact Examiner (Administrative Law Judge)
Signature:	/s/	Date:	5/28/14

Central Office Review and Decision Regarding Sporting License Revocation

I have reviewed the hearing record regarding this matter and adopt the hearing report of the Administrative Law Judge in its entirety.

I agree that Department staff proved by a preponderance of the record evidence that respondent Ronnie E. Fuller 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). The record demonstrates that on November 16, 2013, while hunting deer, respondent discharged his Ithaca Model 37 Featherlight 12-gauge shotgun in the direction of several known private residences. The record further demonstrates that the shot fired from respondent's firearm was the one that struck the victims' residence.

The record also demonstrated that respondent's action in discharging his firearm in the direction of the victims' residence was in reckless disregard of known risks. The residence he struck was directly in respondent's line of fire, and respondent lacked an adequate back stop between his target and the residence. Each of these actions constituted a violation of basic hunter safety rules (see Exhibit 3 at 21). Moreover, respondent knew that residences were in the direction he fired (see Finding of Fact No. 6). Accordingly, the evidence demonstrates that respondent intentionally discharged his firearm in conscious disregard of a known or obvious risk of harm to life or property and, thus, acted negligently and wantonly (see Matter of Drilling, License Revocation Decision, Sept. 23, 2013, at 6-7; Saarinen v Kerr, 84 NY2d 494, 501 [1994] [quoting Prosser & Keeton, Torts § 34 at 213 (5th ed 1984)], see also Restatement [Second] of Torts § 500).

Finally, the five year suspension of respondent's hunting and trapping privileges is authorized and supported by the record. 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:

Five (5) years. Respondent Ronnie E. Fuller 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:

Timothy A. Duffy, Director

Signature:

/s/

Shield #

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Date:

6-05-14