



LICENSE REVOCATION ORDER

NAME AND ADDRESS OF RESPONDENT

Fred F. Moore, III
[REDACTED]
[REDACTED]
[REDACTED]

Revocation Period Begins: 9/29/2014
Revocation Period Ends: 9/29/2016
Licenses Revoked: Hunting

HEARING DATA

Name of Hearing Officer: ALJ Richard Sherman

Date and Time of Hearing: July 16, 2014 at 10:00 a.m.

INCIDENT DATA

Victim: [REDACTED]

Date of Incident: December 7, 2013

In the matter of the revocation of the **hunting** privileges AND licenses currently held and any associated carcass tags, permits and stamps are void and revoked and all the rights and privileges associated therewith of the individual identified above and hereinafter known as the Respondent.

The above matter having come before the above named Hearing Officer, duly designated by the Commissioner of the Department of Environmental Conservation, on the date and time indicated, pursuant to Section 11-0719 of the Environmental Conservation Law of the State of New York, and due proof of the service of the Notice of Hearing and Complaint upon the Respondent having been filed and the Respondent **having appeared** and there having been presented before the Hearing Officer a report of **the shooting of the property of the individual identified above as the victim**, and all persons present having had the opportunity to testify and present evidence, and it further,

Appearing from the foregoing, that the Respondent did, while engaged in **hunting** on the date indicated as the Date of Incident above,

- so negligently and wantonly discharged a firearm as to destroy or damage private property in violation of ECL § 11-0719(2)(a)(1)(iii)], it is, upon the record of this hearing:

ORDERED AND DIRECTED, that any **hunting** licenses, tags, and stamps as noted above now held by the Respondent be hereby revoked, and the Respondent is ordered and declared to be ineligible to hold such licenses, tags and stamps and ineligible to **hunt** 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 either by registered mail or 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 send to the **New York State Department of Environmental Conservation, Division of Law Enforcement, License Revocation Section, 625 Broadway, 3rd Floor, Albany, New York, 12233** any and all **hunting** licenses, tags and stamps issued to the Respondent for the current license year, together with any button or permit associated with **hunting**, and 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.

September 29, 2014

Date

/s/

Director Timothy Duffy
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.

As of the date New York joined the IWVC, there are 43 states which are members. Other states and Canadian provinces are expected to join the IWVC. For a copy of the IWVC member states map, 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	Fred F. Moore, III	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	Matter of Moore	Call for Service #	13-020704
Case No.:	R8-13-020704		
On (Date):	12/07/13	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:	Slug hit and penetrated through a garage door of a private residence.		
By (Name of Responsible Party):	Fred F. Moore, III		
Location:	Town of	Farmington	County of Ontario

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):

6274 East Avon-Lima Road, Avon, NY

at (time): 10:00 a.m. **on (date):** 07/16/14

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

Petitioning Officer Rank, Name, & Shield Lt. Thomas D. Lutz

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 Daniel Malloy, NYSDEC, Region 8
Fred F. Moore, III, [REDACTED]

Others Present At Hearing

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

Lt. Thomas D. Lutz, NYSDEC, Region 8
D. Scott Young, Esq., Ashcraft Franklin Young & Peters, LLP
Lt. Joshua P. VerHague, NYSDEC, Region 8
Michelle Mundt Rocha, Court Reporter, Alliance Court Reporting, Inc., 183 E Main St, Rochester, NY

Firearm/Weapon Pertaining To The Hunting Related Shooting Incident

Make	Remington	Gauge/Caliber	12 Gauge
Model	1187	Owned by:	Fred F. Moore, III
Serial #	PC750623	Possessed by	Fred F. Moore, III

Exhibit List

1. Call for Service Report (#13-020704)
 2. Significant Incident Report
 3. Hunting Related Shooting Investigation Report (Case name: [REDACTED] (House) - Moore III, F.)
 4. Photographic Evidence Log
 5. Voluntary Statement [REDACTED]
 6. Voluntary statement (Respondent, dated 12/07/13)
 7. Aerial Photograph of Site
 - 8 – 16. Site photographs
 17. Evidence Collection Log
 18. Evidence and Chain-of-Custody Record
 19. New York Hunting & Trapping, 2013-14 Official Guide to Laws & Regulations (Vol. 6, Issue No. 1, Oct. 2013).
 20. Remington model 1187, 12 gauge, shotgun*
 21. Slug* (recovered from inside victim's garage), four spent shell casings* (recovered from respondent), one live sabot round* (recovered from respondent), and two waddings* (recovered at site).
 22. Photograph of mark in ground
 23. Photograph of tree stand
 24. Photograph of tree stand (close-up view)
 25. Photograph of wadding on grass
- *Real evidence was left in the custody of Region 8 DLE staff.

Office of Hearings Exhibits:

- A. Copy of Hunting Related Shooting Incident Hearing Notice and Complaint, dated 03/18/14, addressed to respondent, Fred F. Moore, III.
- B. Copy of Hearing Notice, dated 06/05/14, from OHMS to the parties.

Transcript

The hearing was stenographically recorded. The original and copies of the transcript were received on 08/14/14.

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:

Shortly before 8:00 a.m. on 12/07/13 respondent discharged his shotgun four times. At the time of the incident, respondent was hunting deer in a wooded area on his property located east of [REDACTED] Road in the

Town of Farmington (the property address is [REDACTED] but the property is located in the Town of Farmington). His target was a deer to his northwest that was moving southward. There is no evidence indicating that any of respondent's shots hit the deer. The victim's residence, located about 750 feet northwest of respondent's location, was struck by a slug from respondent's shotgun. The slug penetrated through a garage door of the victim's residence and was recovered inside garage.

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 7:55 a.m. on 12/07/13, a shotgun slug struck and penetrated through a garage door on the south side of the victim's residence, [REDACTED]
2. The slug that struck the residence was fired by respondent from his Remington Model 1187 12 gauge shotgun, while he was hunting deer on his own land.
3. At the time of the incident, respondent was located in a wooded area approximately 745' southeast of the victim's residence.
4. The wooded area where respondent was hunting includes some more open areas with little tree cover and extends less than half of distance between respondent's location and the victim's residence. The remaining distance to the victim's residence is open lawn.
5. Respondent's target was a deer located in a small open area northwest of respondent's position. Respondent estimated that he was approximately 60 yards from the target.
6. The ground was frozen and there were puddles and ponded water in the vicinity of the target deer that were iced over.
7. Respondent's sightline to the victim's residence was partly obstructed by trees, but the victim's residence was clearly visible and respondent was aware of its location.
8. There is a slight rise in the land from the location of respondent's tree stand to the victim's residence.

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 license.

The damage to the garage door of the victim's residence demonstrates that the slug came from the southeast, the direction in which respondent was hunting at the time of the incident. The garage door is located on the south side of the residence and the hole left by the slug shows that the slug was travelling right to left (i.e., generally, from east to west) as it penetrated through the door (transcript [tr] at 24-25; exhibits 7, 15). The victim's statement indicates that the victim heard a round hit his home and, on inspection of the damage, determined that the shot had come from the southeast, the direction where respondent was hunting (exhibit 5). As described in his statement, the victim "went to the [southeast] corner of the yard [and] saw a hunter in the tree stand" who identified himself as Fred Moore, the respondent (*id.*).

Although respondent testified that he heard shots fired by other hunters on the morning of the incident, his testimony is inconclusive relative to the location of those hunters (tr at 68-69). Further, respondent testified that the owner of the adjacent parcel to the east of where respondent was hunting does not allow hunting on his land (*id.* at 69). Eliminating that area as a possible source of the discharge makes it highly improbable that any other hunter was responsible for the discharge that caused damage to the victim's home.

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; see also Master Cars, Inc. v Walters, 267 AD2d 942, 942-943 [4th Dept 1999] [quoting Metropolitan Life], *affd* 95 NY2d 395).

At the time of the incident, respondent was approximately 745' southeast of the victim's residence, hunting deer from a tree stand in a wooded area (tr at 18-19, 59; exhibits 5, 7-13). Respondent was on his own land and very familiar with the area he was hunting (tr at 59; exhibit 6, 7). He testified that he had previously hunted his land from a different location. The former location allowed him to fire to the east, away from residences, and had the added benefit of a high bank on the far side of a creek to his east that provided a backstop (tr at 59-60). He testified that he reversed his firing direction because deer tended to run east after being hit or shot at and would cross the creek onto the property of a neighbor who prohibited hunting or harvesting deer on his property (*id.* 60-61). Respondent's decision to reverse the direction of fire created a situation which engendered greater risk to the safety of nearby residents and increased the likelihood of damage to their property. Respondent's choice of shooting lanes exacerbated these risks.

Respondent testified that he was seated in his tree stand when he spotted the deer enter respondent's northwest shooting lane as the deer was moving southward (tr at 61-62). He testified that he initially fired one round from a seated position, thought he had hit the deer, but the deer continued to move southward and respondent fired at the deer three additional times (*id.* at 62-65). Although the victim's residence is visible downrange in respondent's shooting lane (exhibit 12), respondent testified that he believed he shot into a "safe spot" because of the rise in the land toward the victim's residence and because he was firing from an elevated position (*id.* at 61).

The evidence proffered at hearing demonstrates that, at the time respondent first discharged his firearm, his target deer was directly, or nearly directly, in line with the victim's residence (tr at 15-18; exhibits 7, 11, 12). Although there are woods between respondent's tree stand and the victim's residence, the residence is plainly visible (*id.*). Notably, the victim stated that he was able to see and speak with respondent from the southeast corner of the victim's yard while respondent was in his tree stand (exhibit 5). Although there is a slight rise in the land toward the victim's residence, the record does not support a holding that the rise provided an adequate backstop (tr at 43 [staff testimony that there is a "slight rise" in the land toward the victim's residence], 61 [respondent's testimony that, over the 745' distance between the tree stand and the victim's residence, the ground rises "approximately 25 to 30 feet"]). Moreover, the evidence also shows that the ground was frozen and that ponded water and puddles near the target deer were iced-over (see e.g. tr at 16, 53-54; exhibits 11-13, 25).

Respondent is a longtime hunter and is very familiar with the area where he was hunting (tr at 58-59). Despite the fact that he was fully aware of the location of the victim's residence (*id.* at 70), he shot at a deer that was standing in or near a direct line with the residence. Staff acknowledges that there are trees and a slight rise in the land in the direction of the victim's house, but staff testified that "you can still clearly see the house in the background" beyond the location of the target deer (*id.* at 15). Additionally, the frozen ground and ice in the vicinity of the target deer increased the risk that the slug could be deflected upward. Respondent testified that he believed a mark in the ground near where the target deer had been standing was left by the slug he fired; however, no slug was found in the ground and staff testified that the mark was inconsistent with a bullet strike (tr at 44-45, 67; exhibit 22). On this record, I make no determination regarding whether the mark was caused by the impact of a slug. Assuming, however, that the mark in the ground was caused by respondent's slug, the fact that the slug was not found would be consistent with a deflection.

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 know what is beyond your target and "[m]ake sure you have an adequate backstop—don't shoot at a flat, hard surface or water" (exhibit 19 at 21). Here, the evidence shows that respondent discharged his firearm without an adequate backstop, that the target deer was on a hard surface, and that the victim's

residence was directly down range beyond respondent's target.

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 [REDACTED]

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 license be revoked for 2 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:	08/19/14

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 Fred F. Moore, III, 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 December 7, 2013, while hunting deer, respondent discharged his Remington Model 1187 12-gauge shotgun in the direction of a known private residence. The record further demonstrates that a shot fired from respondent's firearm was the one that struck the victim's residence.

The record also demonstrated that respondent's action in discharging his firearm in the direction of the victim's residence was in reckless disregard of known risks. The residence he struck was in or near respondent's direct line of fire. Neither the trees nor the slight rise in the land towards the victim's residence provided an adequate back stop between his target and the residence. Moreover, respondent discharged his firearm in the direction of frozen ground and ice. Each of these actions constituted a violation of basic hunter safety rules (see Exhibit 19 at 21). Moreover, respondent knew that the residence was in the direction he fired (see Finding of Fact No. 7). 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 two year suspension of respondent's hunting 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:

Two (2) years. Respondent Fred F. Moore, III, 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 # 271	Date: 09-25-14
----------------	--------------	----------------