STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Articles 25 and 71 of the New York State Environmental Conservation Law ("ECL") and Part 661 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

- by -

ANTHONY J. SEGRETO,

Respondent.

ORDER

DEC Case No.
R1-20061026-268

Staff of the New York State Department of Environmental Conservation ("Department") commenced this proceeding to enforce provisions of Environmental Conservation Law ("ECL") article 25 and title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") part 661 by service of a verified complaint dated April 30, 2007 upon respondent Anthony J. Segreto ("respondent"). By motion dated December 5, 2007, Department staff now seeks an order without hearing pursuant to 6 NYCRR 622.12.

In the verified complaint, staff charged respondent with two separate violations of tidal wetlands law at property he owns at 135 Blue Point Road, Oakdale, Town of Islip (Suffolk County): (i) causing and/or permitting to be caused, the clearing of vegetation in the adjacent area to a regulated tidal wetland at his property without the required Department permit on or before December 2, 2005, in violation of ECL 25-0401(1) and 6 NYCRR part 661; and (ii) causing and/or permitting to be caused, the placement of fill in the adjacent area to a regulated tidal wetland at his property without the required Department permit on or before December 2, 2005, in violation of ECL 25-0401(1) and 6 NYCRR part 661.

As a result of an extension of time granted by Administrative Law Judge ("ALJ") Mark D. Sanza, respondent had until January 4, 2008 in which to respond to Department staff's motion. Respondent submitted a total of five letters in response to staff's motion: (i) a four-page letter dated December 9, 2007; (ii) a three-page letter dated December 10, 2007; (iii) a two-page letter dated December 15, 2007; (iv) a three-page letter

dated December 23, 2007; and (v) a one-page letter dated December 31, 2007. Respondent's submissions do not consist of, nor do they include, any supporting affidavits or other documentary evidence as required by 6 NYCRR 622.12(c). In addition, also received and considered was a two-page letter dated January 20, 2008 from respondent.

ALJ Sanza prepared the attached hearing report on staff's motion. I adopt ALJ Sanza's hearing report as my decision in this matter subject to the following comments.

The evidence supporting staff's December 5, 2007 motion establishes that respondent owns real property located at 135 Blue Point Road, Oakdale, Town of Islip that contains regulated tidal wetlands subject to the Department's jurisdiction. Department staff's motion also establishes that respondent caused or permitted to be caused the charged activities within the adjacent area to a regulated tidal wetland at his property without the required Department permit.

Department staff has made a prima facie showing that respondent violated ECL 25-0401(1) and 6 NYCRR part 661 by clearing vegetation and placing fill in the adjacent area to a regulated tidal wetland on his property without the required Department permit on or before December 2, 2005. Those violations have continued to December 5, 2007, the date of staff's motion. Respondent fails to offer any evidence sufficient to raise a triable issue of fact rebutting staff's case, or to support his affirmative defense, which was rebutted by Department staff's papers. Accordingly, I conclude that Department staff is entitled to summary judgment on the issue of respondent's liability for the violations charged.

Based upon the record, I also conclude that the proposed civil penalty and remedial measures sought by Department staff to address the violations, and the time recommended by staff by which respondent is to achieve compliance with applicable regulatory standards, are authorized and appropriate.

NOW, THEREFORE, having considered this matter and being duly advised, it is hereby **ORDERED** that:

I. Department staff's motion for order without hearing is granted in its entirety.

II. The subject site at 135 Blue Point Road, Oakdale, Town of Islip (Suffolk County) is owned by respondent and consists of

Department-mapped tidal wetlands and adjacent areas to a regulated tidal wetland.

III. Respondent is adjudged to have caused or permitted to be caused, the clearing of vegetation in the adjacent area to a regulated tidal wetland at his property without the required Department permit in continuing violation of ECL 25-0401(1) and 6 NYCRR part 661 from on or before December 2, 2005 to December 5, 2007, the date of staff's motion.

IV. Respondent is adjudged to have caused or permitted to be caused, the placement of fill in the adjacent area to a regulated tidal wetland at his property without the required Department permit in continuing violation of ECL 25-0401(1) and 6 NYCRR part 661 from on or before December 2, 2005 to December 5, 2007, the date of staff's motion.

V. Accordingly, Department staff's request for relief as set forth in its motion for order without hearing dated December 5, 2007 is granted, and it is hereby ordered that:

A. Respondent is assessed a civil penalty pursuant to ECL 71-2503(1)(a) in the amount of twenty thousand dollars ($20,000), which is due and payable no later than thirty (30) days after the date of service of this order upon respondent. Such payment shall be made in the form of a certified check, cashier's check or money order made payable to the order of the "New York State Department of Environmental Conservation" and shall be delivered by certified mail, overnight delivery or hand delivery to the Department of Environmental Conservation at the following address:

New York State Department of
Environmental Conservation
Division of Legal Affairs, Region 1 Office
50 Circle Road, Stony Brook University
Stony Brook, New York 11790
ATTN: Vernon G. Rail, Esq.
Re: File No. R1-20061026-268

B. In addition to the payment of a civil penalty, no later than sixty (60) days after service of this order upon respondent, respondent is hereby directed to submit an approvable tidal wetland restoration plan to Department staff for its review and approval. For purposes of this order, an approvable tidal wetlands restoration plan ("plan") shall mean a plan that can be approved by

Department staff either as submitted by respondent or subject to only minimal revision. Once the plan is approved, Department staff shall so notify respondent in writing. Respondent's plan shall, at a minimum, provide for:

1. Revegetation of all disturbed adjacent areas to the regulated tidal wetlands on respondent's property where respondent cleared vegetation and placed fill, as identified in Exhibit 2 to the Affidavit of Robert Marsh of Region 1 of the Department, sworn to December 4, 2007. The revegetation shall be with native non-fertilizer dependent species of tidal wetland vegetation, such as, but not limited to, the species listed in the NYSDEC Region 1 - Marine Habitat Protection Tidal Wetland & Native Buffer Planting List and General Planting Guidance;

2. Densities of plants that comply with specifications as listed in the NYSDEC Region 1 - Marine Habitat Protection Tidal Wetland & Native Buffer Planting List and General Planting Guidance;

3. Within forty-five (45) days of the service of this order, placement by respondent of a row of staked hay bales or approvable erosion control devices at the seaward (downslope) edges of the disturbed areas. Respondent is to maintain the hay bales or approvable erosion control devices in good condition until the remedial activities set forth in the plan are completed and all disturbed areas are stabilized with vegetation;

4. An appropriate time table for planting that accounts for the applicable planting season, which time table shall include completion by a date certain;

5. Maintaining a minimum of 85% survival rate on all restoration/replanting required under the plan for a minimum of five (5) years from the date of the completion of the restoration;

6. Notification, by respondent, of Department Region 1 staff at least seven (7) days prior to the date of commencement of the work required by subparagraphs B.1 and B.3. Respondent shall provide such notice by certified mail, return receipt requested, unless respondent and Department staff agree to an alternative method of notice; and

7. Upon completion of all work, submission by respondent to the Department's Region 1 office of photographs showing all the removal and restoration work accomplished.

VI. All communications from respondent to Department staff concerning this order shall be made to Vernon G. Rail, Esq., Assistant Regional Attorney, New York State Department of Environmental Conservation, Region 1, Division of Legal Affairs, 50 Circle Road, Stony Brook University, Stony Brook, New York 11790-3409.

VII. The provisions, terms and conditions of this order shall bind respondent Anthony J. Segreto, and his heirs, successors and assigns, in any and all capacities.

For the New York State Department of Environmental Conservation

By: /s/
Alexander B. Grannis
Commissioner

Dated: February 1, 2008
Albany, New York

TO: Anthony J. Segreto (Via First Class & Certified Mail)
135 Blue Point Road
Oakdale, New York 11769

Anthony J. Segreto (Via First Class & Certified Mail)
5677 Mistridge Drive
Rancho Palos Verdes, California 90275-4918

Vernon G. Rail, Esq. (Via First Class Mail)
Assistant Regional Attorney
New York State Department of
Environmental Conservation
Region 1 Office
SUNY at Stony Brook
50 Circle Road
Stony Brook, New York 11790

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Articles 25 and 71 of the New York State Environmental Conservation Law ("ECL") and Part 661 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

- by -

ANTHONY J. SEGRETO,

Respondent.

HEARING REPORT ON STAFF'S MOTION FOR ORDER WITHOUT HEARING

DEC Case No. R1-20061026-268

Appearances:

- Alison H. Crocker, Deputy Commissioner and General Counsel (by Assistant Regional Attorney Vernon G. Rail, of counsel) for staff of the New York State Department of Environmental Conservation.

- Anthony J. Segreto, respondent pro se.

INTRODUCTION

By notice of motion and supporting papers dated December 5, 2007, staff of the Department of Environmental Conservation ("Department") moved for an order without hearing against respondent Anthony J. Segreto ("respondent") in this administrative proceeding commenced to enforce the provisions of article 25, title 4 of the Environmental Conservation Law ("ECL") (Tidal Wetlands Act) and its implementing regulations.

Department staff's motion was served upon respondent by certified mail at one of his two known addresses in New York and California. Respondent accepted service of staff's motion papers at his New York address on December 7, 2007 as evidenced by a copy of the return receipt, signed by respondent, provided to the Department's Office of Hearings and Mediation Services by staff on December 11, 2007.

In a letter dated December 7, 2007, I informed Mr. Segreto that because the customary 20 days for filing a response to staff's motion for order without hearing, set by regulation, fell within the Christmas holiday period, his time to file such a

response was extended until January 4, 2008. Mr. Segreto was also advised that his failure to file a response to staff's motion for order without hearing by January 4, 2008 would constitute a default.[1]

In a series of five letters dated December 9, 10, 15, 23 and 31, 2007, respondent submitted his response to staff's motion.[2] Mr. Segreto's responses do not consist of, nor do they include, any supporting affidavits, documents, photographs or other evidence. Instead, taken together, respondent's submissions on this motion consist almost entirely of grievances concerning the management of the Department's Region 1 office and personal attacks against individual employees of the Department's Region 1 office who have been involved in this proceeding.

BACKGROUND AND PROCEDURAL HISTORY[3]

Department staff initially attempted to commence this enforcement proceeding against respondent in April 2007 by mailing copies of a notice of pre-hearing conference, notice of hearing and verified complaint, via certified mail, to respondent at two of his addresses in New York and California. When those attempts failed, the notice of hearing and verified complaint were ultimately served upon respondent in person, in June 2007, in accordance with section 622.3(a)(3) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

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[1] Respondent was further advised that the provisions governing enforcement proceedings - 6 NYCRR Part 622 - could be found on the Department's website at: www.dec.ny.gov/regs/4485.html.

[2] Respondent's letter dated December 10, 2007 is addressed to the New York State Attorney General, the New York State Bar Association, and the Commissioner, among others. This letter contains respondent's accusations of misconduct which, according to him, "requires an external investigation." Respondent's December 10th letter does not actually respond to or otherwise answer staff's motion for order without hearing.

[3] This is the third ruling in this proceeding. For a discussion of the procedural history of this case, see my previous rulings of October 12, 2007 (www.dec.ny.gov/hearings/39023.html), and November 15, 2007 (www.dec.ny.gov/hearings/39772.html).

Charges Alleged

According to staff's verified complaint, respondent is the owner of real property located at 135 Blue Point Road, Oakdale, Town of Islip, County of Suffolk, State of New York, having Suffolk County Tax Number 500-378-2-25 (the "site"). The complaint alleges that the site contains regulated tidal wetlands subject to the Department's jurisdiction and that respondent undertook certain activities within the regulated adjacent area to a regulated tidal wetland, at the subject site, without the required Department permit.

Specifically, staff's complaint alleged two separate causes of action as follows:

> (1) "Respondent has violated ECL § 25-0401.1 and Part 661 of 6 NYCRR, by causing and/or permitting to be caused, the clearing of vegetation in the regulated adjacent area to a regulated tidal wetland, at the subject site, without the required DEC permit, on or before December 2, 2005;" and
>
> (2) "Respondent has violated ECL § 25-0401.1 and Part 661 of 6 NYCRR, by causing and/or permitting to be caused, the placement of fill in the regulated adjacent area to a regulated tidal wetland, at the subject site, without the required DEC permit, on or before December 2, 2005."[4]

Staff's complaint requested a penalty in the amount of $20,000 for the violations alleged, as well as removal of fill from the site and restoration of the tidal wetland area at issue.

Previous Motions and Rulings

After respondent appeared at a pre-hearing conference at the Department's Region 1 office in July 2007, Department staff filed a motion for default judgment, along with supporting papers, against respondent. As grounds for its default motion, Department staff alleged that respondent failed to file a timely verified answer to the complaint by August 20, 2007, a date that had been established by staff (see 6 NYCRR 622.4[a] and 622.15).

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[4] See Department staff's April 30, 2007 complaint, at ¶¶ "TENTH" and "ELEVENTH."

In a ruling issued October 12, 2007, I denied staff's motion for default judgment based upon respondent's written submissions to the Department dated August 20, 2007 (see Matter of Anthony J. Segreto, ALJ's Ruling on Department Staff's Motion for Default Judgment, Oct. 12, 2007). In particular, I determined that respondent's August 20, 2007 submissions to the Department, containing denials of the Department's jurisdiction over the site, were adequate to put staff on notice of respondent's denial of liability and constituted a timely answer to staff's complaint (see id. at 5-7, 10-11).[5]

Staff was directed to file a statement of readiness for adjudicatory hearing in accordance with 6 NYCRR 622.9(b) following issuance of the October 12, 2007 ruling (see id. at 11). Neither party sought leave to file an expedited appeal from the October 12, 2007 ruling in this matter, and the time to file such a motion has expired (see 6 NYCRR 622.6[e][1]).

Instead of filing a statement of readiness for hearing, Department staff served a motion seeking: (1) a ruling directing respondent to amend his answer; or, in the alternative (2) a ruling striking all matter in respondent's answer that was irrelevant or scandalous (see 6 NYCRR 622.6[c]). As part of its request for alternative relief, staff also sought clarification as to whether it had been placed on notice of any affirmative defenses in respondent's answer, as well as a determination as to what specific allegations in staff's complaint had been either admitted and/or denied by respondent.

In a ruling issued November 15, 2007, I denied staff's motion to direct respondent to amend his answer or, in the alternative, to strike any scandalous or prejudicial matter from respondent's answer to the complaint (see Matter of Anthony J. Segreto, ALJ's Ruling on Department Staff's Motion to Direct Service of an Amended Answer or to Clarify Respondent's Answer, Nov. 15, 2007, at 3-12). Additionally, staff's request for notice of the affirmative defense of inapplicability of a permit requirement for the activity alleged in the complaint (see 6 NYCRR 622.4[c]) was rendered academic based upon respondent's submissions to the Department comprising his answer (see Matter of Anthony J. Segreto, ALJ's Ruling on Department Staff's Motion to Direct Service of an Amended Answer or to Clarify Respondent's

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[5] Respondent's answer was neither signed nor verified by him in accordance with the provisions of CPLR 3020(a) and 6 NYCRR 622.4. As a pro se party, however, respondent's submissions were afforded the liberal construction generally afforded such papers (see CPLR 3026).

Answer, Nov. 15, 2007, at 12).

Furthermore, the November 15, 2007 ruling determined that respondent's answer had admitted the allegations in certain paragraphs of staff's April 30, 2007 complaint, and denied the allegations in the remaining paragraphs of the complaint (see id. at 12-13). Because respondent had denied that the site contained tidal wetlands and that he needed a permit from the Department to conduct any activities at the site, such as clearing vegetation and placing fill, I determined that he had raised the affirmative defense of inapplicability of a permit requirement for the activities alleged by staff (see id.; see also 6 NYCRR 622.11[b][2]).

Staff was again directed to file a statement of readiness for adjudicatory hearing following issuance of the November 15, 2007 ruling (see id. at 14). Neither party sought leave to file an expedited appeal from the November 15, 2007 ruling in this matter, and the time to file such a motion has expired (see 6 NYCRR 622.6[e][1]).

PROCEEDINGS

In lieu of filing a statement of readiness for hearing, Department staff served the present motion for order without hearing contending that no material issues of fact exist and that staff is entitled to judgment as matter of law for the violations alleged in the complaint (see 6 NYCRR 622.12). Accordingly, Department staff's motion requests that the Commissioner issue an order holding that:

A. Respondent violated Articles 25 and 71 of the ECL and 6 NYCRR Part 661 at his property; and

B. Respondent committed the violations described in two separate causes of action in the April 30, 2007 complaint, *i.e.* clearing vegetation and placing fill in a regulated tidal wetland or its regulated adjacent area on the site at 135 Blue Point Road, Oakdale, New York.

Additionally, Department staff's motion for order without hearing requests that the Commissioner issue an order directing respondent to:

I. Immediately stop any further actions causing such violations or additional violations to continue;

II. Pay an assessed civil penalty not less than twenty thousand dollars ($20,000); and

III. Restore the property at issue in accordance with the following schedule of compliance:

A. Respondent shall revegetate all disturbed areas, including the 45′ x 51′ cleared area and the 15′ x 51′ area, the 48′ x 84′ area and 15′ x 60′ area where there was placement of fill in the regulated adjacent area to a regulated tidal wetland, at the subject site, without the required DEC permit with native non-fertilizer dependent species of tidal wetland vegetation, such as, but not limited to, the species listed in the NYSDEC Region 1 - Marine Habitat Protection <u>Tidal Wetland & Native Buffer Planting List and General Planting Guidance</u>;

B. Densities of plants will comply with specifications as listed in the NYSDEC Region 1 - Marine Habitat Protection <u>Tidal Wetland & Native Buffer Planting List and General Planting Guidance</u>;

C. A row of staked hay bales or approvable erosion control devices will be placed at the seaward (downslope) edges of the disturbed areas immediately upon execution of [an] Order and maintained in good condition until project is completed and all disturbed areas are stabilized with vegetation;

D. An appropriate time table for planting that incorporates the [applicable] planting season. Plantings shall be completed by [a date certain];

E. Respondent shall maintain a minimum of 85% survival rate on all restoration/replanting required under [an] Order for a minimum of five (5) years from the date of the completion of the restoration;

F. Prior to the commencement of any work, Respondent shall send notice including date of commencement to the DEC, seven (7) days prior to commencement via Certified Return Receipt Mailing;

G. Upon completion of all work, Respondent shall submit photographs of all removal and restoration work accomplished; and

H. Undertake such other and further actions as the Commissioner may determine to be appropriate.

Papers Reviewed

Department staff's motion is brought pursuant to 6 NYCRR 622.12(a), which provides that "[i]n addition to a notice of hearing and complaint, the department staff may serve . . . a motion for order without hearing together with supporting affidavits reciting all the material facts and other available documentary evidence."

Staff's motion consists of the December 5, 2007 notice of motion and affirmation of Assistant Regional Attorney Vernon G. Rail ("Rail Affirmation"), with attached Exhibits marked "A" through "G." Exhibit "A" contains copies of an October 2, 2007 letter from respondent to Mr. Rail (and others) in response to Department staff's previous motion for default judgment, as well as a June 15, 2007 letter from respondent to Peter Scully, Regional Director of the Department's Region 1 office. Exhibit "B" is a copy of a Joint Application for Permit, along with accompanying drawings. The Joint Application, signed by respondent as "owner" of the site, sought a tidal wetlands permit from the Department for proposed work on his property and was co-signed by his designated agent, Dwight Isacksen, on September 29, 2005. The Joint Application for permit was submitted to the Department sometime after September 29, 2005. The two drawings accompanying the Joint Application for permit are dated October 7, 2005 and were prepared for respondent by Dwight Isacksen.

Exhibit "C" is a copy of a large sketch plan/map of respondent's property at 135 Blue Point Road, Oakdale, New York, prepared by Dwight Isacksen for respondent on October 6, 2005. The sketch plan contains a description of the proposed project and scope of work to be undertaken in conjunction with respondent's Joint Application for Permit, as well as handwritten entries along various points on the map of respondent's property. Exhibit "D" is a copy of a portion of the Department's 1974 Tidal Wetlands Map #656-510 depicting an aerial view of respondent's property at 135 Blue Point Road, Oakdale, New York.

Exhibit "E" contains copies of three documents submitted by respondent to the Department on August 20, 2007, and comprising a substantial portion of his answer to staff's complaint. These documents include: (i) an August 20, 2007 letter from respondent to Commissioner Grannis; (ii) respondent's undated biography; and (iii) an undated document entitled "Notes for Article 78 Filing - NYSDEC Region #1 - Preservation of the

Pepperidge Hall Estate Lodge." Exhibit "F" is a copy of a September 10, 2007 document prepared by respondent entitled "Pepperidge Hall Estate Lodge Photo History Analysis," although no photographs are actually included with or attached to the document. Exhibit "G" is a copy of a November 15, 2007 letter submitted by respondent to the Department's Office of Hearings and Mediation Services during the course of this proceeding.

Accompanying staff's notice of motion and the Rail Affirmation is Department staff's "Memorandum of Law in Support of Motion for Order Without Hearing," as well as the supporting affidavits of Department Region 1 staff employees Christian Nyako (Biologist 1 - Marine), and Robert Marsh (Regional Manager, Bureau of Habitat Protection) (see 6 NYCRR 622.12[a]).

Mr. Nyako's supporting affidavit, sworn to November 30, 2007 ("Nyako Affidavit"), includes attached Exhibits marked "1" through "4." Exhibit "1" is a current copy of Mr. Nyako's curriculum vitae. Exhibit "2" contains a copy of Department staff's "Record of Inspection" of respondent's property at 135 Blue Point Road, Oakdale, New York on December 2, 2005, as well as 14 color photographs of respondent's property taken by Mr. Nyako on December 2, 2005. The photographs depict regulated tidal wetland areas on respondent's property that were allegedly impacted by placement of fill and vegetation cutting. Exhibit "3" is a copy of the Department's 1974 Tidal Wetlands Map #656-510 depicting an aerial view of respondent's property at 135 Blue Point Road, Oakdale, New York. Exhibit "4" is a copy of Department staff's "Notice of Violation" issued to respondent on December 19, 2005 by Karen A. Graulich, then-Regional Manager of Marine Habitat Protection in Region 1, for alleged tidal wetland violations (ECL Article 25 and 6 NYCRR Part 661) at respondent's property at 135 Blue Point Road, Oakdale, New York.

Mr. Marsh's supporting affidavit, sworn to December 4, 2007 ("Marsh Affidavit"), includes attached Exhibits marked "1" and "2." Exhibit "1" is a current copy of Mr. Marsh's curriculum vitae. Exhibit "2" is copy of a large-size survey map of respondent's property at 135 Blue Point Road, Oakdale, New York that was submitted in conjunction with his September 2005 Joint Application for Permit to the Department (see Rail Affirmation, Exhibit "B"). The survey map is dated October 6, 2004 and was prepared for respondent by Barrett, Bonacci & VanWeele, P.C., Civil Engineers/Surveyors (Hauppaugge). The survey map at Exhibit "2" contains Mr. Marsh's handmade sketches of the approximate locations where he claims to have observed placement of fill and vegetation clearing in regulated tidal wetland areas on respondent's property at 135 Blue Point Road, Oakdale, New

York during a site visit to the property on November 28, 2005.

As noted previously, respondent submitted a four-page typewritten letter dated December 9, 2007 and a two-page typewritten letter December 15, 2007 in response to staff's motion. While Mr. Segreto also submitted a copy of a December 10, 2007 letter to the New York State Attorney General and New York State Bar Association (and others) as a response to staff's motion, his December 10th letter only requests various entities to commence an "investigation" into the circumstances giving rise to and the continuation of Department staff's enforcement action against him but does not answer the present motion. Respondent also submitted a three-page typewritten letter dated December 23, 2007, that, among other things, poses a series of numbered questions but does not properly answer staff's motion. Finally, respondent submitted a one-page typewritten letter dated December 31, 2007. Similar to respondent's prior submissions in response to Department staff's two previous motions in this matter (see the Rulings from staff's two prior motions discussed further above), Mr. Segreto's most recent responses to staff's motion for order without hearing do not address either the substance or the merits of staff's motion.[6]

Instead, respondent's December 9 and 23, 2007 letters consist primarily of his grievances against Region 1 Department personnel as well as allegations regarding the management of the Department's Region 1 office. Likewise, while respondent's December 15, 2007 letter contends that if this matter were to proceed to hearing he would present a number of maps, photographs and other historical documents in support of his position, he notably did not include any of these items with his responses. In fact, neither Mr. Segreto's December 9, 2007 response nor his responses of December 15, 23 or 31, 2007 consist of, nor do they include, any supporting affidavits or other documentary evidence as required by 6 NYCRR 622.12(c). In fact, even allowing respondent's submissions on this motion the liberal construction afforded papers by a pro se party, respondent has failed to produce a scintilla of evidence in order to oppose staff's motion or any proof to support his affirmative defense. To date, respondent has not submitted any other papers in opposition to staff's motion for order without hearing.

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[6] Mr. Segreto's December 15, 2007 letter states that his correspondence of December 9 and 10, 2007, along with his December 15th letter, constitute his total response to staff's motion for order without hearing. Despite this contention, respondent submitted his letters of December 23 and 31, 2007.

FINDINGS OF FACT

Based upon the papers submitted on this motion, and upon respondent's answer to staff's complaint, the undisputed facts determinable as a matter of law are as follows:

1. Respondent Anthony J. Segreto is the owner of real property located at 135 Blue Point Road, Oakdale, Town of Islip (Suffolk County), New York. Respondent has owned this property since February 2005.

2. The property at 135 Blue Point Road, Oakdale, New York ("site") is identified as having Suffolk County Tax Map Number 500-378-01-27.

3. The site is approximately 3.6 acres in size and contains, among other things, an existing single-story home with a detached garage and gravel driveway.

4. The site is located adjacent to both the Deer Lake and Brook Creek waterbodies in Suffolk County, New York.

5. The site is depicted on and included in the Department's 1974 Tidal Wetlands Inventory Map #656-510.

6. The Department's 1974 Tidal Wetlands Map #656-510 depicts an aerial view of respondent's property, which is dominated by Deer Lake. Deer Lake is denoted with the abbreviation "LZ" (which means "littoral zone"). The map also shows the interconnected waterway known as Brook Creek, which is also delineated on the map with the abbreviation "LZ."[7]

7. The Department's 1974 Tidal Wetlands Map #656-510 depicting an aerial view of respondent's property denotes that the site contains a designation with the abbreviation "IM" (which means "intertidal marsh").[8]

8. The site contains tidal wetlands and tidal wetland

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[7] "Littoral zone" is a classification of tidal wetlands delineated "LZ" on an inventory map "that includes all lands under tidal waters which are not included in any other category" (<u>see</u> 6 NYCRR 661.4[hh][4]; <u>see</u> <u>also</u> 6 NYCRR 661.2[b] and [e]).

[8] "Intertidal marsh" is a classification of tidal wetlands delineated "IM" on an inventory map as a "vegetated tidal wetland zone," "lying generally between average high and low tidal elevation" (<u>see</u> 6 NYCRR 661.4[hh][2]; <u>see</u> <u>also</u> 6 NYCRR 661.2[b] and [d]).

adjacent areas regulated by, and subject to the jurisdiction of, the Department.

9. On September 29, 2005, respondent signed a Joint (New York State/United States Army Corps of Engineers) Application for Permit ("Joint Application") as "owner" of the site. The Joint Application sought a tidal wetlands permit from the Department and was submitted to the Department sometime after September 29, 2005.

10. The Joint Application for permit sought approval from the Department for respondent to, among other things, construct a series of bulkheads to control erosion at the site and to fill low lying areas on tidal wetland portions of the site.

11. In conjunction with the Joint Application for tidal wetlands permit, respondent submitted to the Department certain drawings, sketch plans and survey maps depicting his property and the site. These documents indicate the presence of regulated tidal wetlands and tidal wetland adjacent areas at the site.

12. Upon signing the Joint Application for tidal wetlands permit, respondent affirmed that the information provided on the application form and all attachments submitted therewith was true to the best of his knowledge and belief, and false statements were punishable under law.

13. On or about November 28, 2005, Department staff biologist Robert Marsh conducted an inspection of the site in conjunction with the review of respondent's Joint Application for tidal wetlands permit submitted to the Department. During his inspection, Mr. Marsh determined that the site contained tidal wetlands regulated by the Department. Mr. Marsh observed the placement of fill and cutting of vegetation in the regulated area adjacent to a regulated tidal wetland at the site, and sketched the approximate locations of that filling and cutting on a survey map of respondent's property that had been submitted with respondent's Joint Application for tidal wetlands permit.

14. On December 2, 2005, Department staff biologist Christian Nyako, accompanied by Department staff member Eric Alexander, conducted an inspection of respondent's property as a result of Mr. Marsh's November 28, 2005 inspection of the site. During his inspection, Mr. Nyako completed a record of inspection documenting that clearing of vegetation and placement of fill had occurred in the regulated area adjacent to a regulated tidal wetland without the required Department permit. During the December 2, 2005 inspection of the site, Mr. Nyako took 14 color

photographs documenting the disturbed areas of tidal wetland that were impacted by the placement of fill and clearing of vegetation at the site. Mr. Nyako also confirmed that the site is encompassed by the Department's 1974 Tidal Wetlands Map #656-510 and subject to the Department's tidal wetlands jurisdiction.

15. Since at least December 2, 2005, respondent caused, directed or otherwise allowed clearing of vegetation in the regulated area adjacent to a regulated tidal wetland at the site.

16. Since at least December 2, 2005, respondent caused, directed or otherwise allowed placement of fill in the regulated area adjacent to a regulated tidal wetland at the site.

17. On December 19, 2005, Karen A. Graulich, then-Regional Manager of the Department's Region 1 Marine Habitat Protection section, issued a Notice of Violation to respondent for violations of State tidal wetlands law for clearing of vegetation and placement of fill within the regulated area adjacent to a regulated tidal wetland at the site without a Department permit.[9]

18. On May 11, 2006, respondent met with the Department's Region 1 staff employees Christian Nyako and Karen Graulich for a compliance conference in this enforcement proceeding.

19. On July 11, 2007, respondent and his wife met with the Department's Region 1 staff employee Christian Nyako and Assistant Regional Attorney Vernon G. Rail for a pre-hearing conference in this enforcement proceeding.

20. Respondent did not receive, and to date has not received, a permit from the Department to undertake any activities proposed in his Joint Application in the regulated area adjacent to a regulated tidal wetland at the site.

21. Respondent did not receive, and to date has not received, a permit from the Department to undertake any clearing of vegetation or placement of fill within the regulated area adjacent to a regulated tidal wetland at the site.

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[9] It is worth noting that, under the Department's regulations, the processing and review of a permit application may be suspended by staff due to the commencement of an enforcement proceeding (see 6 NYCRR 621.3[e]). In this matter, a notice of enforcement action against respondent was sent by Karen Graulich on December 19, 2005 (see Nyako Affirmation, Exhibit "4") during the pendency of staff's review of respondent's Joint Application.

DISCUSSION

Nature of the Motion

Department staff served its motion for order without hearing in addition to, and following service of, a notice of hearing and complaint upon respondent in this matter (see 6 NYCRR 622.12[a]). Based upon respondent's August 20, 2007 submissions to the Department, it was determined that he had filed an answer to staff's complaint (see Matter of Anthony J. Segreto, ALJ's Ruling on Department Staff's Motion for Default Judgment, Oct. 12, 2007).

In particular, respondent admitted that he has owned the subject property at 135 Blue Point Road, Oakdale, Town of Islip, since February 2005. Additionally, respondent's answer, containing denials of the Department's jurisdiction over the site, was deemed adequate to put staff on notice of respondent's denial of liability for the violations alleged, as well having raised the affirmative defense of inapplicability of a permit requirement for the activities alleged in staff's complaint (see id. at 5-7, 10-11). Despite respondent's answer and affirmative defense, Department staff contends that, based upon the facts of this matter, it is entitled to judgment on the merits as a matter of law and requests a Commissioner's order accordingly.

Standards for Motion for Order Without Hearing

A motion for order without hearing pursuant to 6 NYCRR 622.12 is governed by the same principles as a motion for summary judgment made pursuant to New York Civil Practice Law and Rules ("CPLR") § 3212. Section 622.12(d) provides that a contested motion for order without hearing "will be granted if, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party." Section 622.12(d) also provides that the motion will be granted "in part if it is found that some but not all such causes of action or any defense should be granted, in whole or in part."

On a motion for summary judgment under CPLR 3212, a "movant must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law .... The party opposing the motion ... must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests .... '[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are

insufficient' for this purpose" (Gilbert Frank Corp. v Federal Ins. Co., 70 NY2d 966, 967 [1988] [citations omitted] [quoting Zuckerman v City of New York, 49 NY2d 557, 562 (1980)]. Thus, Department staff bears the initial burden of making a prima facie showing of entitlement to summary judgment as a matter of law with respect to each element of the violations alleged (see Cheeseman v Inserra Supermarkets, Inc., 174 AD2d 956, 957-958 [3d Dept 1991]). Once Department staff has done so, "it is imperative that a [party] opposing ... a motion for summary judgment assemble, lay bare, and reveal his proofs" in admissible form (id.).

On a summary judgment motion, the law requires the fact finder to view the evidence in a light most favorable to the non-moving party, here the respondent; and, as such, respondent is entitled to every favorable inference, and a decision must be made on the version of the facts most favorable to him (see Henderson v New York, 178 AD2d 129 [1st Dept 1991]). This is particularly true where, as here, respondent is a pro se party. Facts appearing in the movant's papers that the opposing party fails to controvert are deemed to be admitted (see Kuehne & Nagel, Inc. v Baiden, 36 NY2d 539, 544 [1975]).

The Commissioner has also provided extensive direction concerning the showing parties must make in their respective motions and replies, and how the parties' filings will be evaluated (see Matter of Richard Locaparra, d/b/a L&L Scrap Metals, Commissioner's Final Decision and Order, June 16, 2003). The Commissioner's discussion includes numerous citations to case law, the Department's enforcement regulations, and CPLR 3212 (see id.).

In this case, respondent has not submitted any meaningful response to oppose Department staff's motion. Mr. Segreto's December 9, 15, 23 and 31, 2007 letters do not contain, nor do they include, any supporting affidavits or other documentary evidence as required by 6 NYCRR 622.12(c).[10] Nor has respondent produced any evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which his answer and affirmative defense rests. In fact, respondent's affirmative defense, for which he bears the burden

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[10] As noted previously, respondent's December 10, 2007 letter to the New York State Attorney General and New York State Bar Association only requests various entities to commence an "investigation" into the circumstances giving rise to, and the continuation of, Department staff's enforcement action against him but does not answer or otherwise respond to the present motion.

of proof (see 6 NYCRR 622.11[b][2]), was entirely rebutted by Department staff's submissions. Accordingly, once it is concluded that staff has carried its initial burden of establishing a prima facie case on the factual allegations underlying each of the claimed violations, it may then be determined whether those claims have been established as a matter of law. If so, Department staff's motion may be granted.

Discussion of Facts

My findings of fact are based upon observations made during inspections of respondent's site conducted by Department staff employees on November 28, 2005 and December 2, 2005 (see Nyako Affidavit, and Exhibits "2" - "4" attached thereto; see also Marsh Affidavit, and Exhibit "2" attached thereto). These inspections of the site were conducted in conjunction with staff's review of respondent's Joint Application for tidal wetlands permit to the Department (see 6 NYCRR 621.6[b]).[11] My findings of fact are also based upon the photographic evidence and other public records of the Department submitted with staff's motion for order without hearing (see Nyako Affidavit, and Exhibits "2" - "4" attached thereto; and Marsh Affidavit, and Exhibit "2" attached thereto; see also Rail Affirmation, and Exhibits "B" - "D" attached thereto).

Staff's submissions on this motion, and respondent's answer, establish, prima facie, that respondent Anthony J. Segreto has owned the subject site since February 2005. The Rail Affirmation, Nyako Affidavit and Marsh Affidavit, and the documentary and photographic evidence attached as Exhibits to staff's motion, all clearly establish that the site contains tidal wetlands and tidal wetland adjacent areas regulated by, and subject to the jurisdiction of, the Department (see Rail Affirmation, and Exhibits "B" - "D" attached thereto; Nyako Affidavit, and Exhibits "2" - "4" attached thereto; and Marsh Affidavit, and Exhibit "2" attached thereto). Furthermore, the

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[11] This provision states, among other things, that: "[i]n reviewing an application for a permit, department staff ordinarily inspects the project site or facility and surrounding area to verify existing conditions, determine the accuracy of materials submitted in the application, assess impacts of a project on the environment in the immediate and surrounding area, and determine whether the project satisfies applicable permitting standards" (see 6 NYCRR 621.6[b]). A federal court rejected claims that a Department inspection of tidal wetland property for determining a permit application constituted an unlawful trespass in Palmieri v Lynch, __ F.Supp.2d __ (E.D.N.Y. 2003), affd 392 F.3d 73 (2d Cir. 2004).

Rail Affirmation, Nyako Affidavit and Marsh Affidavit, and the documentary and photographic evidence attached as Exhibits to staff's motion, establish the violations alleged by staff to have occurred at the site since at least December 2, 2005 and that said actions were undertaken by, or on behalf of, respondent, without the requisite permit from the Department (see id.).

While respondent's answer denied the presence of tidal wetlands on his property, and maintained that the site contains only "manmade wetlands," these contentions are belied by the unrefuted documentary evidence submitted by staff on this motion. Most significant among this evidence are: (i) the Department's 1974 Tidal Wetlands Map #656-510 delineating respondent's property, the waterbodies surrounding the site, and the "IM" and "LZ" designations noted thereon;[12] and (ii) respondent's Joint Application for Permit, signed under penalty of perjury and submitted to the Department along with other documents in 2005, acknowledging the presence of tidal wetlands at the site that respondent now claims do not exist there (see Rail Affirmation, and Exhibits "B" and "C" attached thereto; Nyako Affidavit, and Exhibit "2" attached thereto; and Marsh Affidavit, and Exhibit "2" attached thereto; see also 6 NYCRR 661.4[hh][2] and [4]).

This documentary evidence is further bolstered by the personal observations, written record of inspection, and color photographs taken during respective inspections of the site by Department staff employees Christian Nyako and Robert Marsh in November and December 2005. This evidence confirms the presence of regulated tidal wetlands and tidal wetland adjacent areas on respondent's property, and the clearing of vegetation and placement of fill within the area adjacent to a regulated tidal wetland at the site without a Department permit (see Nyako Affidavit, and Exhibits "2" and "3" attached thereto; and Marsh Affidavit, and Exhibit "2" attached thereto). This evidence has also not been refuted by respondent on this motion (see 6 NYCRR 622.12[c]).

Furthermore, respondent's September 2005 Joint Application for tidal wetlands permit, and the documents prepared on his behalf and submitted in support of his Joint Application are entirely inconsistent with respondent's affirmative defense of inapplicability of a permit requirement (see 6 NYCRR

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[12] "All maps, surveys and official records affecting real property, which are on file in the State in the office of the registrar of any county, any county clerk, any court of record or any department of the State or City of New York are *prima facie* evidence of their contents" (see 6 NYCRR 622.11[a][9]).

622.4[c]). While respondent contended in his answer that he did not need a permit or the Department's approval in order to undertake activities at his property, the September 2005 Joint Application for permit - signed by respondent - sought the Department's approval to, among other things, construct bulkheads to control erosion at the site and fill low lying areas in tidal wetland portions of the site (see Rail Affirmation, Exhibits "B" and "C"; and Marsh Affidavit, Exhibit "2").

Moreover, in conjunction with his Joint Application for tidal wetlands permit, respondent submitted to the Department various drawings, sketch plans and survey maps depicting his property and the site. These documents, prepared and submitted on behalf of respondent, indicate the presence of regulated tidal wetlands and tidal wetland adjacent areas on the site (see id.). In view of the documents submitted by respondent in conjunction with his Joint Application for permit to the Department, as well as other documents submitted by staff on its motion, respondent cannot sustain his burden of proof on the affirmative defense of inapplicability of a permit requirement for the activities alleged by staff (see 6 NYCRR 622.11[b][2]).

The record reveals that, to date, the Department has not issued a tidal wetlands permit to respondent for any of the proposed activities at his property in conjunction with his 2005 Joint Application. Accordingly, based on the evidence submitted on this motion, Department staff has established a prima facie case that respondent conducted certain activities regulated by the Department within the area adjacent to a regulated tidal wetland at the site without a Department permit.

Liability for Violations Charged

ECL 25-0401(1) provides, in relevant part:

> ". . . with respect to any tidal wetland, no person may conduct any of the activities set forth in subdivision 2 of this section unless he has obtained a permit from the commissioner to do so."[13]

Subdivision 2 of ECL 25-0401 provides a broad list of activities subject to regulation by the Department in tidal

[13] 6 NYCRR 661.8 also establishes permit requirements for regulated activities conducted "on or after August 20, 1977 on any tidal wetland or any adjacent area."

wetlands and their adjacent areas, including:

> " . . . any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads, the driving of any pilings, or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area" (see ECL 25-0401[2]).

1. Clearing Vegetation in the Regulated Adjacent Area to a Regulated Tidal Wetland at the Site

Department staff alleges that respondent violated ECL 25-0401(1) and 6 NYCRR part 661 by causing and/or permitting to be caused, the clearing of vegetation in the regulated adjacent area to a regulated tidal wetland, at his property, without the required Department permit, on or before December 2, 2005.

The evidence in this proceeding reveals that respondent has never received a permit from the Department to undertake clearing of vegetation in regulated tidal wetland adjacent areas at the site, and that since at least December 2, 2005, vegetative clearing in such areas has taken place (see Nyako Affidavit, and Exhibits "2" and "4" attached thereto; and Marsh Affidavit, and Exhibit "2" attached thereto). Therefore, staff has established that respondent violated ECL 25-0401(1) and 6 NYCRR part 661 from December 2, 2005 to December 5, 2007 (the date of staff's motion).

2. Placement of Fill in the Regulated Adjacent Area to a Regulated Tidal Wetland at the Site

Department staff alleges that respondent violated ECL 25-0401(1) and 6 NYCRR part 661 by causing and/or permitting to be caused, the placement of fill in the regulated adjacent area to a regulated tidal wetland, at his property, without the required Department permit, on or before December 2, 2005.

The evidence in this proceeding reveals that respondent

has never received a permit from the Department to undertake placement of fill in regulated tidal wetland adjacent areas at the site, and that since at least December 2, 2005, placement of fill in such areas has occurred (see Nyako Affidavit, and Exhibits "2" and "4" attached thereto; and Marsh Affidavit, and Exhibit "2" attached thereto). Therefore, staff has established that respondent violated ECL 25-0401(1) and 6 NYCRR part 661 from December 2, 2005 to December 5, 2007 (the date of staff's motion).

Penalty and Other Relief Requested

Department staff seeks an order of the Commissioner directing respondent to pay a civil penalty in the amount of twenty thousand dollars ($20,000). ECL 71-2503 sets forth the penalty provisions for violations of ECL article 25 (Tidal Wetlands Act) and its implementing regulations (6 NYCRR Part 661), and provides, in pertinent part, as follows:

> "Any person who violates, disobeys or disregards any provision of article twenty-five shall be liable to the people of the state for a civil penalty not to exceed ten thousand dollars for every such violation . . . . Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation" (see ECL 71-2503[1][a]).

Determining the maximum penalty allowable by law requires an analysis of the number of violations for which a penalty is authorized. In this case, Department staff has established that respondent is in violation of two separate applicable prohibitions in ECL article 25 or its implementing regulations continuously from December 2, 2005 until December 5, 2007. Based upon the foregoing penalty provisions, I have calculated the maximum penalty authorized by ECL 71-2503(1)(a) to be $14,660,000. This amount was calculated as follows:

First day of violation (12/02/05)	--	$ 10,000
Penalty for period of 12/03/05 to 12/05/07 (732 days x $10,000 per day)	--	$7,320,000
	Total	$7,330,000

Accordingly, the maximum penalty for two violations (x $7,330,000 per each violation) equals $14,660,000 (see Matter of Nieckoski v New York State Dept. of Envtl. Conservation, 215 AD2d 761 [2d

Dept. 1995] [affirming the propriety of the Department's assessment of separate penalties for each tidal wetland violation involved]; see also Matter of Linda Wilton and Costello Marine, Inc., Order of the Commissioner, Feb. 1, 1991).

However, both Department staff's April 30, 2007 complaint and its December 5, 2007 motion for order without hearing in this case request a total penalty in the amount of only $20,000: $10,000 for each of the two violations alleged against respondent. This civil penalty amount is significantly less than the maximum amount authorized by ECL 71-2503(1)(a) but is nevertheless reasonable under the circumstances of this case. Accordingly, I recommend that the Commissioner grant the amount of relief Department staff seeks in its complaint and its motion.

Department staff also seeks an order of the Commissioner directing respondent to restore his property and the site in accordance with a schedule of compliance provided with, and detailed in, staff's April 30, 2007 complaint (see pp. 5-7 herein). ECL 71-2503(1)(c) provides that:

> ". . . the commissioner shall have power to direct the violator to cease and desist from violating the [Tidal Wetlands] act and to restore the affected tidal wetland or area immediately adjacent thereto to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the commissioner."

It is the policy of the Department to require restoration of tidal wetland benefits and functions lost as a result of illegal activity (see Tidal Wetlands Enforcement Policy, § III "Goals," Commissioner Policy DEE-7 [Feb. 8, 1990]). In certain circumstances, however, although full restoration may not be technically achievable, restoration shall be undertaken to the extent possible to achieve the goal of "no net loss" to the tidal wetland or its adjacent area (see id., § V "Sanctions").

Here, Department staff has established that respondent has violated separate prohibitions in ECL 25-0401(1) and 6 NYCRR part 661. Department staff contends that respondent's actions in clearing vegetation and placing fill in the regulated adjacent area to a regulated tidal wetland at the site has diminished the values and functions of the tidal wetlands on his property. These values and functions are fully described in 6 NYCRR 661.2. Accordingly, Department staff is entitled to an order directing respondent to undertake restoration measures of the regulated

tidal wetland areas impacted at his property and I recommend that the Commissioner grant the relief sought by staff.

CONCLUSIONS OF LAW

In sum, my conclusions of law are as follows:

Violations Established

1. The site consists of a Department-mapped tidal wetland and regulated adjacent areas to a regulated tidal wetland.

2. Respondent has owned the site since February 2005.

3. From at least December 2, 2005, respondent violated ECL 25-0401(1) and 6 NYCRR part 661 by causing and/or permitting to be caused, the clearing of vegetation in the regulated adjacent area to a regulated tidal wetland, at his property, without the required Department permit.

4. From at least December 2, 2005, respondent violated ECL 25-0401(1) and 6 NYCRR part 661 by causing and/or permitting to be caused, the placement of fill in the regulated adjacent area to a regulated tidal wetland, at his property, without the required Department permit.

Penalty Assessment

5. The violation of ECL 25-0401(1) and 6 NYCRR part 661 established in paragraph “3” above constitute a single, continuing violation for penalty calculation purposes.

6. The violation of ECL 25-0401(1) and 6 NYCRR part 661 established in paragraph “4” above constitute a single, continuing violation for penalty calculation purposes.

7. The maximum civil penalty authorized by law for the separate violations established on Department staff’s motion for order without hearing is $14,660,000. This amount is based upon two violations beginning on December 2, 2005 and continuing until December 5, 2007 (the date of staff’s motion).

8. The law applicable to the violations established by Department staff provides the Commissioner with the power to direct respondent to restore the affected regulated tidal wetland and/or regulated adjacent area to a regulated tidal wetland on his property.

RECOMMENDATIONS

Based on the foregoing and the record in this case, I recommend that the Commissioner issue an order granting Department staff's motion for order without hearing, holding respondent liable for the violations determined as a matter of law, and granting the civil penalty and other relief requested by staff.

/s/

Mark D. Sanza
Administrative Law Judge

Dated: January 11, 2008
Albany, New York