

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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In the matter of the alleged violation
of 9 NYCRR Part 578 by:

NOTICE OF HEARING
Agency File: E2007-047

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Respondents.
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PLEASE TAKE NOTICE THAT pursuant to Article 3 of Title 6 of the State Administrative Procedure Act and 9 NYCRR Part 581, a formal administrative enforcement process has been initiated pursuant to 9 NYCRR Subpart 581-4 to obtain an Agency determination and order with respect to an alleged violation by you of 9 NYCRR Part 578, as more specifically described in the Complaint attached hereto.

PLEASE ALSO TAKE NOTICE THAT within 30 days following the date of this Notice of Hearing and the attached Complaint, you must serve upon the Agency an answer to the Complaint at the address below. Any affirmative defenses, including exemptions to permit requirements, must be raised in the Answer.

PLEASE ALSO TAKE NOTICE THAT motions pursuant to 9 NYCRR § 581-4.9 for an Agency determination and order without a hearing may be made at any time prior to a hearing, and shall be decided by the Agency unless a hearing officer has been assigned.

PLEASE ALSO TAKE NOTICE THAT in the event this matter is not resolved by agreement or through a motion, a hearing will be

convened at the offices of the Adirondack Park Agency (the "Agency") on Route 86 in Ray Brook, Essex County, State of New York, to consider this matter. A hearing officer will set a date for the hearing and will notify all parties thereto of the time, date and place of the hearing.

PLEASE ALSO TAKE NOTICE THAT you may appear at the hearing in person or by counsel; you may authorize a person other than an attorney to speak on your behalf at the hearing so long as you also appear at the hearing; witnesses will testify under oath; a record of the proceeding will be made; you may produce witnesses and evidence in your behalf; you may request issuance of subpoenas to compel attendance of witnesses and production of records relating to this matter; and you may cross-examine witnesses and examine witnesses produced against you.

PLEASE ALSO TAKE NOTICE THAT interpreter services shall be made available to deaf persons, at no charge, pursuant to Section 301 of the State Administrative Procedure Act. Request for interpreter services should be made within a reasonable time before the date of the hearing.

PLEASE ALSO TAKE NOTICE THAT the above hearing location is reasonably accessible to persons with a mobility impairment.

PLEASE ALSO TAKE NOTICE THAT whether or not you appear, the hearing will convene at the stated time and place, and that your non-attendance shall not prevent the Agency from finding you in

violation of 9 NYCRR Part 578, issuing an order requiring restoration and imposing penalties pursuant to ECL § 71-2303 and/or Executive Law § 813, and ordering such other and further relief as may be appropriate and authorized by law.

DATED: Ray Brook, New York
August 13, 2007

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director
Adirondack Park Agency
P.O. Box 99, Route 86
Ray Brook, New York

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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In the matter of the alleged violation
of 9 NYCRR Part 578 by:

COMPLAINT

Agency File: E2007-047

LERROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Respondents.
-----X

The Adirondack Park Agency ("Agency"), by its Acting
Executive Director Mark Sengenberger, complains and alleges as
follows:

Preliminary Statement

1. This complaint is made pursuant to 9 NYCRR Parts 578
and 581 and the Freshwater Wetlands Act, Environmental
Conservation Law Articles 24 ("Wetlands Act") and 71, as well as
Executive Law Sections 809 and 813, alleging a violation by
Respondents. Specifically, Respondents or their agents filled
wetlands on Respondent The Douglas Corporation of Silver Lake's
property in the Town of Black Brook, Clinton County, in violation
of 9 NYCRR Part 578.

2. The Agency seeks injunctive relief requiring
Respondents to remove the fill from the wetland and to restore
the wetland to its original condition. The Agency also seeks
civil penalties for Respondents' violation.

Parties

3. The Agency is a duly constituted agency within the Executive Department of the State of New York, with headquarters in Ray Brook, Essex County, New York.

4. Respondent The Douglas Corporation of Silver Lake owns the subject property, Respondent Leroy Douglas is the chairman or chief executive officer of The Douglas Corporation of Silver Lake, and Respondents or their agents are responsible for the placement of fill in wetlands on the subject property.

Statutory and Regulatory Framework

A. Wetlands Act

5. The Wetlands Act was enacted to implement a public policy "to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoilation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state." ECL § 24-0103.

6. Freshwater wetlands located within the boundaries of the Adirondack Park are subject to the jurisdiction of the Agency, and regulated activities affecting such wetlands cannot be undertaken without an Agency permit. ECL § 24-0801(2).

7. The Agency implements the Wetlands Act in the Adirondack Park through regulations promulgated at 9 NYCRR 578. Pursuant to those regulations, any person who wishes to undertake a "regulated activity" in a wetland must first obtain a wetlands permit from the Agency. 9 NYCRR §578.2(a). "Regulated activities" are defined in the Agency's regulations to include, inter alia:

"any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly" (9 NYCRR § 578.3(n)(1)(i))

8. Any person who violates any provision of the Wetlands Act, or any rule, regulation, order or permit issued pursuant thereto may be ordered to "cease his violation of the [Wetlands] act and . . . restore the affected freshwater wetland to its condition prior to the violation . . ." ECL § 71-2303(1). In addition, the violator is subject to liability for a civil penalty not to exceed \$3,000 for every such violation.

B. Adirondack Park Agency Act

9. The Adirondack Park Agency Act ("APA Act") was enacted with the basic purpose of insuring "optimum overall conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park." Executive Law § 801.

10. To implement the basic purpose of the APA Act, any person who wishes to undertake any of the "Class A regional projects" identified by the Act must first obtain an Agency permit. Executive Law § 809(2)(a). "Class A regional projects" in Low Intensity Use areas are defined by the APA Act to include all land uses and development involving wetlands. Executive Law § 810(1)(c)(1).

11. "Land use or development" is defined by the APA Act to mean "any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of the use of land or a structure." Executive Law § 812(28).

12. Prior to issuing a permit for a Class A regional project on Low Intensity Use lands within the Adirondack Park, the Agency must, in addition to reviewing the permit application in accordance with the policies and standards set forth in the Adirondack Park Agency Act, determine that the project "would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park... taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project," Executive Law § 809(10)(e).

13. The Agency implements its authority to regulate land use or development in wetlands pursuant to regulations set forth in 9 NYCRR Part 578.

14. Any person who violates any provision of the Adirondack Park Agency Act or any rule or regulation promulgated thereunder by the Adirondack Park Agency is subject to liability for a civil penalty not to exceed \$500 for each day or part thereof during which the violation continues. Executive Law § 813(1).

Factual Allegations

15. The subject property, owned by Respondent The Douglas Corporation of Silver Lake, is described as Tax Map Parcel 308-2-1 in the Town of Black Brook, Clinton County and is designated Low Intensity Use.

16. Since 2003, Respondents have filled wetlands subject to the Agency's jurisdiction on the subject property without first obtaining a permit from the Agency.

17. The wetlands that Respondents have filled lie under portions of a gravel road for a proposed subdivision on the subject property and areas adjacent to the northwestern portion of such gravel road.

18. By Settlement Agreement E2005-200, Respondent The Douglas Corporation of Silver Lake acknowledged some wetland filling related to construction of the road claiming, however, that the road was pre-existing.

19. Under the terms of Settlement Agreement E2005-200, executed on November 9, 2006, Respondent The Douglas Corporation

of Silver Lake agreed, among other things, to narrow the road by removing fill from the wetland.

20. The Douglas Corporation of Silver Lake failed to complete the required restoration work properly and did not respond to Agency staff requests for the hiring of a qualified contractor to do the work.

21. While preparing for enforcement of the terms of Settlement Agreement E2005-200, Agency staff undertook additional investigation and discovered that Respondents or their agents had constructed the entire gravel road, including all of the portions of the road through wetlands, since 2003. Furthermore, staff discovered that Respondents or their agents had placed fill in wetlands adjacent to the northwestern portion of the gravel road since 2003.

Cause of Action

22. 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(iii) require an Agency permit prior to any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly, into freshwater wetlands.

23. Respondents violated 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(iii), on their own or through their agent, by filling freshwater wetlands on the subject property without an Agency permit.

WHEREFORE, Agency staff respectfully request that the Agency issue a determination and order pursuant to 9 NYCRR 581-4.16, Environmental Conservation Law § 71-2303, and Executive Law § 813 as follows:

A. Finding Respondents in violation of 9 NYCRR §§ 578.2(a) and 578.3(n) (1) (iii);

B. Requiring Respondents to undertake and complete remediation and restoration of all wetlands filled on the subject property since 2003 by a date certain and in accordance with a remediation and restoration plan, developed by a wetlands professional, to be approved by the Agency.

C. Imposing civil penalties against each of the Respondents for their violation pursuant to ECL 71-2303(1) of \$3,000 and pursuant to Executive Law § 813 of up to \$500 per day since at least October 2, 2006; and

D. Such other and further relief as the Agency deems just and proper.

Dated: Ray Brook, New York
August 13, 2007

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director
Adirondack Park Agency
P.O. Box 99, Route 86
Ray Brook, New York 12977