

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CORTLAND

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STATE OF NEW YORK and the NEW YORK  
STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,

Plaintiffs,

- against -

JAMES C. STEVENS, III,

Defendants.

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SUMMONS

Index No. \_\_\_\_\_

**To the Above Mentioned Defendant: YOU ARE HEREBY SUMMONED**  
to answer the verified complaint in this action and to serve a copy of your answer on  
plaintiffs attorneys within 20 days after the service of this summons, exclusive of  
the day of service; and in case of your failure to appear or to answer, judgment will  
be taken against you by default for the relief demanded in the verified complaint.  
Plaintiffs designate Cortland County as the place of trial because the defendant  
resides there and judgment demanded would affect the use or enjoyment of real  
property in Cortland County.

Dated: November 13, 2014  
Albany, NY

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for State Plaintiffs

By: \_\_\_\_\_

MICHAEL J. MYERS  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CORTLAND

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STATE OF NEW YORK and the NEW YORK  
STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,

**VERIFIED COMPLAINT**

Plaintiffs,

Index No. \_\_\_\_\_

- against -

JAMES C. STEVENS, III,

Defendants.

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The State of New York and the New York State Department of Environmental Conservation (DEC) (collectively, the State), by their attorney Eric T. Schneiderman, Attorney General of the State of New York, allege as follows:

**NATURE OF THE ACTION**

1. The State brings this action to protect the public welfare and environment of New York, to abate a public nuisance and to enjoin James C. Stevens, III, from continuing violations of the Environmental Conservation Law (ECL) and Part 750 of the New York Codes, Rules, and Regulations (NYCRR) at property located on Ridgeview Avenue in the Town of Cortlandville, County of Cortland (the Site). The southern boundary of the Site is contiguous with the northern boundary of St. Mary's Cemetery, located at 4101 West Road, Cortlandville. Stevens's activities at the Site have caused stormwater laden with sediment, gravel and dirt to flow downhill from the Site to St. Mary's, causing significant soil erosion in the cemetery which has opened the sides of monumented

graves and desecrated grave sites by covering them with debris and, downstream of the cemetery, has flooded State Route 281

2. Stevens has undertaken excavating activities diverting stormwater away from the Site and onto St. Mary's Cemetery and State Route 281 (the Project). Stevens' violations of State Water Pollution Control Law, ECL Article 17, include the unpermitted discharge of stormwater from construction activity, failure to implement a stormwater pollution prevention plan (Pollution Prevention Plan), and the discharge of stormwater that has harmed and will continue to harm public welfare and the environment. Through his activities, Stevens also has created and maintained a public nuisance. The State seeks injunctive relief, mitigation of harm, and civil penalties to address these violations.

## **STATUTORY AND REGULATORY FRAMEWORK**

### **Environmental Conservation Law and Implementing Regulations**

3. ECL § 1-0101 declares the policy of the state of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being.

4. Pursuant to ECL Article 17, it is illegal to discharge any pollutant to the waters of the state from a point source except as authorized in a discharge permit. In particular, ECL § 17-0803 makes it illegal for any person to discharge pollutants to the waters of the state from any outlet or point source without a State Pollutant Discharge Elimination System (SPDES) permit, or in violation of any

term or condition of such a permit. Under the statute, a “person” is defined as any individual, public or private corporation or political subdivision; “pollutant” includes, dredged spoil, solid waste, rock, and sand; “waters of the state” include all “bodies of surface or underground waters;” and “point source” means “any discernible, confined and discrete conveyance,” including but not limited to pipes, ditches, channels, conduits, and discrete fissures. ECL §§ 17-0105(1), (2), (16), and (17).

5. Under 6 NYCRR § 750-1.4(a), no person shall discharge any pollutant without a SPDES permit issued by DEC regarding such discharge.

6. Under DEC’s stormwater program, dischargers of stormwater associated with construction activity that do not obtain an individual SPDES permit must obtain permit coverage under a “general permit” issued by DEC for stormwater discharges associated with construction activity. 6 NYCRR § 750-1.21(b)(2). To obtain coverage under this general permit, the discharger must send DEC written notice of intent to be covered by the general permit in advance of commencing construction and develop and implement a Pollution Prevention Plan that complies with DEC’s technical standards for erosion and sediment control during construction, and post-construction water quantity and water quality controls as required in DEC’s SPDES General Permit for Construction Activities (General Permit).

7. The failure to obtain coverage under the General Permit subjects the violator to civil liability of up to \$37,500 per day for each violation and to injunctive relief. ECL §§ 71-1929, 1931.

### **Public Nuisance**

8. A public nuisance includes an act or omission that endangers or injures the property, health, safety, or comfort of a considerable number of persons.

9. A public nuisance is a violation against the state and is subject to abatement or prosecution by the Attorney General.

10. An activity constitutes a public nuisance *per se* if it is performed in violation of the law and endangers or injures the property, health, safety, or comfort of a considerable number of persons.

11. The Attorney General is authorized pursuant to Executive Law § 63(12) to bring an action for injunctive relief and damages against any person engaging in persistent illegality.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

#### **Parties**

12. Plaintiff State of New York is a sovereign entity, which brings this *parens patriae* action on behalf of its citizens and residents.

13. Plaintiff DEC is an executive department of the State of New York charged with enforcing the ECL and its implementing regulations.

14. At all relevant times, defendant Stevens has been an owner of the Site. The Site is designated on the Cortland County tax rolls as parcel no.: 86.00-02-01.100.

15. Stevens is a “person” under the meaning of ECL § 17-0105(1).

16. Upon information and belief, Stevens is a resident of Cortland County.

### **Jurisdiction and Venue**

17. The Court has jurisdiction over this action pursuant to ECL §§ 71-1929 and 71-1931.

18. Pursuant to CPLR §§ 503 and 509 venue is proper in Cortland County because Stevens resides there and the Site is located there.

### **The Site and Effected Properties**

19. The Site consists of approximately 113 acres of undeveloped land located on Ridgeview Avenue, Town of Cortlandville, Cortland County, New York.

20. The southern boundary of the Site is contiguous with St. Mary’s Cemetery.

21. The relevant portion of State Route 281 includes New York State Department of Transportation (DOT) infrastructure designed to collect stormwater that is then conveyed through a culvert and into Tributary 2A of the West Branch Tioughnioga River, water index no. Sr-44-14-60-2a, which is a Class “C” waterbody.

### **History of Violations at the Site**

22. In or about July 2012, Stevens or persons acting on his behalf engaged in clearing, grading, excavating and related construction activities involving soil

disturbances on more than one acre of land. This activity included construction of a pond with a stormwater outfall discharging to an outlet channel near the Site boundary with St. Mary's. The pond stormwater outfall includes a twelve inch diameter corrugated metal drain pipe located at the pond bottom which keeps the pond empty. This drain pipe discharges stormwater into the outlet channel, onto a stone apron, and ultimately downslope onto St Mary's.

23. The Project altered the stormwater drainage flow pattern (also referred to as stormwater runoff direction) of the Site. Prior to the Project, approximately 120 acres drained into a wooded channel flowing west and away from the St. Mary's burial plots and Route 281. Construction of the Project has resulted in a change in the stormwater drainage flow pattern by redirecting the stormwater flow of approximately 120 acres into the pond and then causing it to flow out the pond outfall, to the east through the outlet channel and then discharge downslope from the stone apron point source.

24. Subsequent to its construction, the stormwater diversion Project has collected stormwater from all storm events and discharged such flow from the stone apron point source onto St. Mary's and other nearby properties, including State Route 281.

25. Prior to construction of the stormwater diversion Project, approximately 2 acres of the Site drained toward St. Mary's and Route 281.

26. Prior to commencing construction of the stormwater diversion Project, Stevens failed to develop a Pollution Prevention Plan for the Site.

27. Stevens also has failed to either obtain a SPDES permit for the Project or obtain coverage under the DEC General Permit prior to commencing construction of the Project.

28. In July 2013, DEC staff informed Stevens that there were no erosion or sediment controls in place and that stormwater runoff from the Site was causing severe erosion along the northern boundary of St. Mary's cemetery.

29. In July 2013, DEC informed Stevens that the Project, including the dry pond drainpipe outfall and stormwater discharges from the Site must be covered by a SPDES Permit.

30. In July 2013, DEC further informed Stevens that to obtain coverage under the DEC General Permit, he must first have a professional engineer prepare a Pollution Prevention Plan, including erosion and sediment control measures and permanent stormwater management practices, in conformance with DEC technical standards.

31. In July 2013, DEC further informed Stevens that failure to implement an acceptable Pollution Prevention Plan and obtain the required SPDES permit would subject defendant to civil penalties of up to \$37,500 per day.

32. In October 2013, DEC staff commenced an administrative enforcement proceeding against Stevens by service of a Notice of Complaint, Hearing and Pre-Hearing. The DEC staff complaint alleged Stevens failed to prepare a Pollution Prevention Plan and failed to file a Notice of Intent or otherwise obtain coverage under the General Permit before commencing the construction activities described

above. The DEC staff complaint alleged these actions violated ECL § 17-0803, 6 NYCRR § 750-1.4(a).

33. The DEC administrative complaint alleged that Stevens had constructed or modified a pond and pond outfall and that as a result of such actions there is significant erosion down gradient from the pond and outfall and damage to St. Mary's Cemetery.

34. The DEC staff complaint sought relief including: i) finding that Stevens has violated the ECL, DEC regulations and the General Permit; ii) enjoining Stevens from continuing the violations; iii) requiring Stevens to comply with the General Permit; and iv) imposing a civil penalty of \$36,000.

35. In May 2014, DEC inspected the Site and observed there were no erosion or sediment controls in place and turbid stormwater runoff from the Project was causing severe erosion of St. Mary's property, overwhelming the DOT stormwater infrastructure and flooding Route 281.

36. In May 2014, Catholic Cemeteries of the Roman Catholic Diocese of Syracuse, Inc. (Catholic Cemeteries) informed DEC that the erosion caused by stormwater runoff from the Site forced St. Mary's Cemetery to disinter and move two bodies in early May 2014 and four bodies during the week of May 26, 2014. Catholic Cemeteries further informed DEC that two additional bodies would be disinterred and moved in the near future and that there will be others as well.

37. In June 2014, DEC issued a Notice of Violation to Stevens for the continuing unlawful discharge of pollutants to the waters of the state without a

SPDES permit in violation of ECL § 17-0803 and 6 NYCRR § 750-1.4(a). The notice expressly directed Stevens to immediately comply with the requirements of ECL § 17-0803 and 6 NYCRR § 750-1.4(a). The June 2014 notice of violation is attached as **Exhibit 1**.

38. In July 2014, DEC inspected the Site and confirmed that Stevens had not corrected the violations identified in the June notice of violation.

39. In light of the recalcitrance exhibited by Stevens, DEC referred the matter to the Attorney General to seek injunctive and all other appropriate judicial relief, and in November 2014 DEC discontinued the administrative enforcement proceeding.

### **Public Nuisance**

40. In September 2013, Catholic Cemeteries, which owns St. Mary's Cemetery, commenced a civil action against Stevens in New York Supreme Court, County of Cortland, Index No. 13-452 via summons and verified complaint. The verified complaint seeks relief including a permanent injunction barring Stevens from discharging surface water onto and into the St. Mary's property.

41. In September 2013, Mark Lazaroski, Director of Catholic Cemeteries, submitted an affidavit in support of an application seeking a preliminary injunction against Stevens. The Lazaroski affidavit states that the surface water discharges from the Site are disrupting the cemetery operations and damaging its land, vegetation, roads and other cemetery features. The Lazaroski affidavit also states that significant large pooling of water has occurred at the base of the hill on St.

Mary's property and overflowed a nearby state of New York highway and into neighborhoods opposite St. Mary's. The Lazaroski affidavit further states that the St. Mary's former swale has become a wide, deep, unsightly, irregular, mud and stone laden, meandering hazard to cemetery operations and a desecration of the cemetery and the graves affected by it and that surface water flows from the Site into the cemetery every day.

42. Upon information and belief, St. Mary's cemetery is affiliated with three Roman Catholic parishes serving hundreds of families. These parishes are St. Mary's in Cortland, St. Margaret's in Homer, and St. Anthony of Padua in Cortland. There have been approximately 11,000 burials in St. Mary's cemetery, including 73 in 2011, 68 in 2012 and 65 in 2013.

43. In addition to families of the deceased who have been buried at St. Mary's cemetery, other residents of Cortland and the surrounding area visit the cemetery while attending funerals or otherwise paying their respects to the deceased.

44. Since July 2012, the flow of stormwater from the Site has transported sediment, gravel and dirt from the Site and caused significant soil erosion on the St. Mary's property, opening the sides of monumented graves and damaging St. Mary's grounds.

45. Upon information and belief, on multiple dates including but not limited to July 1, 2013, the Project's illegal stormwater discharges have desecrated grave sites at St. Mary's by covering them with debris and by eroding them.

46. Upon information and belief, several St. Mary's families have been forced to have the bodies of their loved ones disinterred and reburied at other locations because of the erosion caused by the stormwater diversion Project's continuing illegal stormwater discharges.

47. Upon information and belief, the damage to St. Mary's cemetery is disturbing to family members and friends of the people buried there, to the parishioners of St. Mary's, St. Margaret's and St. Anthony of Padua, and to other residents of Cortland and the surrounding area.

48. Since July 2012, significant quantities of stormwater originating at the Site have discharged from the stormwater diversion Project onto St. Mary's and other nearby properties and ultimately onto Route 281.

49. On multiple dates including but not limited to May 16, 2014, the Project's illegal stormwater discharges have caused stormwater to flow downslope onto Route 281 where it has overwhelmed the DOT stormwater collection system and flooded the road. The stormwater transporting sediment on such dates been collected by the DOT stormwater infrastructure and ultimately discharged to Tributary 2A of the West Branch Tioughnioga River.

50. Since July 2012, the flow of stormwater from the Site has contributed to flooding of Route 281 and thereby threatened public welfare.

**FIRST CAUSE OF ACTION**  
**(Water Pollution Control Violations)**

51. As set forth above, Stevens has failed to implement a Pollution Prevention Plan providing for compliance with the State's SPDES General Permit for Storm Water Discharges pursuant to titles 7 and 8 of ECL Article 17.

52. Stevens' failure to implement a Pollution Prevention Plan is a continuing violation of ECL § 17-0808 and 6 NYCRR § 750-1.4.

53. Pursuant to ECL §§ 71-1929 and 71-1931, the State is entitled to injunctive relief requiring Stevens to immediately develop and implement a DEC approved Pollution Prevention Plan.

54. Pursuant to ECL §§ 71-1929(1), (3), the State is entitled to penalties of up to \$37,500 per day for Stevens' failure to develop and implement a Pollution Prevention Plan.

55. Stevens has constructed an outlet channel and point source(s) which have conveyed and continue to convey untreated stormwater offsite.

56. The discharge of stormwater from each point source to waters of the state, including to groundwater and to Tributary 2A of the West Branch Tioughnioga River, is a continuing violation of ECL § 17-0808 and 6 NYCRR § 750-1.4.

57. Pursuant to ECL §§ 71-1929 and 71-1931, the State is entitled to injunctive relief requiring Stevens to immediately eliminate the point source discharges.

58. Pursuant to ECL §§ 71-1929(1), (3), the State is entitled to penalties of up to \$37,500 per day for each violation relating to the point source discharges.

59. Stevens has operated and continues to operate the Site without a SPDES permit under 6 NYCRR § 750-1.7 or a general permit under 6 NYCRR § 750-1.21.

60. Stevens' failure to obtain either an individual SPDES permit or a notice of intent to comply with the DEC General Permit is a continuing violation of ECL § 17-0808 and 6 NYCRR § 750-1.4.

61. Pursuant to ECL §§ 71-1929 and 71-1931, the State is entitled to injunctive relief requiring Stevens to immediately cease discharging stormwater from the Site until either a SPDES permit or a DEC General Permit is obtained.

62. Pursuant to ECL §§ 71-1929(1), (3), the State is entitled to penalties of up to \$37,500 per day for each unpermitted discharge point.

**SECOND CAUSE OF ACTION**  
**(Public Nuisance)**

63. As set forth above, Stevens' acts and omissions, including the unauthorized diversion and discharge of stormwater, have created a public nuisance by transporting stormwater laden with sediment, gravel and dirt from the Site and thereby causing significant soil erosion on St. Mary's Cemetery property, opening the sides of monumented graves, desecrating grave sites by covering them with debris, overwhelming the Route 281 stormwater infrastructure and flooding Route 281.

64. At all relevant times, Stevens' actions have endangered or injured the property, health, safety or comfort of a considerable number of persons, including but not limited to hundreds of families served by St. Mary's Cemetery and residents of the state travelling on Route 281 during heavy stormwater discharge events.

65. Stevens' acts, omissions, and violations of the law, including ECL Article 17 and regulations concerning stormwater management constitute a public nuisance *per se*.

66. Stevens has failed to abate the public nuisance created by the Project at the Site, despite having actual knowledge of the conditions creating the nuisance.

67. Upon information and belief, Stevens is continuing to create or maintain a public nuisance and the State has no adequate remedy at law for the public nuisance created and maintained by Stevens.

68. The State is entitled to an injunction requiring Stevens to immediately abate the public nuisance.

**WHEREFORE**, the State respectfully request that this Court enter judgment against Stevens as follows:

A. Ordering Stevens to immediately cease violating ECL Article 17 and DEC's regulations implementing ECL Article 17;

B. Ordering Stevens to immediately abate the public nuisance he has created and maintained;

C. Ordering Stevens to mitigate and remediate the harm from the violations to the State's natural resources as directed by DEC;

D. Ordering that DEC staff and retained experts shall have unfettered access to all areas of the Site for purposes of inspecting the Site;

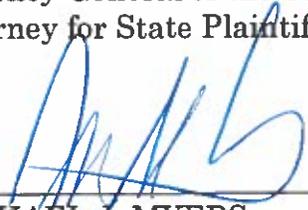
E. Ordering Stevens to pay civil penalties of up to \$37,500 per day for each violation of the ECL and DEC's regulations implementing the ECL; and

F. Such other and further relief as the Court deems just and proper.

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for State Plaintiffs

Dated: November 13, 2014

By:



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MICHAEL J. MYERS  
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518.474.8080

**VERIFICATION**

STATE OF NEW YORK            )  
  )ss.:  
COUNTY OF ONONDAGA        )

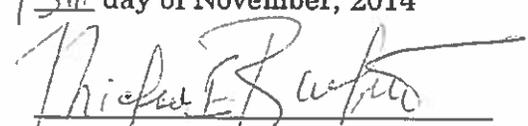
Joseph Sluzar, being duly sworn, deposes and states:

I am an attorney with the New York State Department of Environmental Conservation (DEC), and I am fully familiar with the facts of this preceding. The source of my information is the records and documents contained in the files of DEC and my discussions with DEC staff and others with knowledge and information regarding this matter.

I have read the foregoing Verified Complaint and know the contents thereof to be true to the best of my knowledge except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

This verification is made pursuant to the provisions of CPLR 3020(d)(2).

  
\_\_\_\_\_  
JOSEPH SLUZAR

Sworn to before me this  
13<sup>th</sup> day of November, 2014  
  
\_\_\_\_\_  
Notary Public

**MICHAEL E. BARNHOLDT**  
Notary Public, State of New York  
Qualified in Onondaga County  
Reg. No. 01BA6163301  
Commission Expires March 19, 2015