The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

Sthua & Colleen Sliva
367 Bee Hole Road
Loudon, NH 03307

Re: Bee Hole Brook, Loudon
Wetlands File # 2005-2302

ADMINISTRATIVE ORDER
NO. WD 06-023

May 5, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Sthua & Colleen Sliva, pursuant to RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly- constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.

2. Sthua & Colleen Sliva are individuals having a mailing address of 367 Bee Hole Road Loudon, NH 03307.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

3. RSA 482-A:14, III, provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

4. Sthua & Colleen Sliva are the owners of property located at 367 Bee Hole Road in Loudon, more particularly described on the Town of Loudon Tax Map 12 as Lot 3 ("the Property").

5. The Property is divided by Bee Hole Brook, which is shown on the US Geological Survey Map as a perennial stream.

6. Blanding's Turtles, a "Species of Concern" in New Hampshire, have been identified in this location by New Hampshire Fish & Game Non-game Wildlife Program. New Hampshire Fish & Game has found that closed bottom culverts are not conducive to the passage of Blanding's Turtles and recommends the use of bridge crossings on Bee Hole Brook.

7. On September 23, 2005, DES personnel conducted an inspection of the Property. During the inspection DES personnel found the following:

a) The culvert installed in Bee Hole Brook is 50 ft x 10 ft.

b) Approximately 160 linear feet of stream bank was impacted by the construction of the crossing.

c) Approximately 6,200 sq ft of wetlands was filled for the crossing.

d) On the east side of the stream channel, the fill had been mulched and hay bales had been staked along the edge of the channel.

e) On the east side of the channel, sedimentation was present between the hay bales and the water flowing in the channel.

f) Unstable soils on the east side of the stream had slumped into the brook, filling approximately 75 sq ft of stream channel.

g) The soils had not been stabilized on top of the culvert or on the west side of the channel nor had erosion controls been installed.

8. During the inspection, on September 23, 2005, DES personnel issued a Wetlands Inspection Report to Mr. Sliva requesting stabilization of all exposed soils and installation of additional erosion controls.

9. During the inspection on September 23, 2005, Mr. Sliva stated that he had removed a pre-existing deteriorating timber bridge from the brook and replaced the bridge with a culvert crossing.

10. On September 27, 2005, Mr. Sliva hand delivered photographs depicting stabilization of exposed slopes and installation of additional erosion controls as requested in the Wetlands Inspection Report dated September 23, 2005.

11. On December 13, 2005, DES issued Letter of Deficiency ("LOD") WET 05-053 to Mr. and Mrs. requesting monitoring and maintenance of the stabilization methods and erosion controls and submission of a restoration plan within 60 days to remove the culvert and restore the stream and wetlands.

12. Mr. and Mrs. Sliva did not meet any of the voluntary deadlines set out in the LOD.

13. To date, DES has not received any further correspondence from Mr. or Mrs. Sliva regarding this matter.

D. Determination of Violations

1. Sthua and Colleen Sliva have violated RSA 482-A:3, I, by filling approximately 6,200 square feet of wetlands without obtaining a permit from DES.

2. Sthua and Colleen Sliva have violated RSA 482-A; 3, I, by impacting approximately 160 linear feet of stream bank and 50 feet of stream channel without obtaining a permit from DES.

3. Sthua and Colleen Sliva have violated RSA 482-A:3, I, by failing to properly install and maintain temporary siltation/erosion controls resulting in deposition of fill into a stream channel.

E. Order

Based on the above findings, DES hereby orders Sthua and Colleen Sliva as follows:

1. **Immediately cease and desist** all work in wetlands and surface waters except as specifically Ordered in E.2 through E.6, below.

2. **Within 15 days from the date of this Administrative Order,** retain a certified wetland scientist to prepare a restoration plan and to supervise implementation and monitoring of the restoration in accordance with Items E.3.a through E.3.g, below. Submit a letter of retention from the certified wetland scientist to DES documenting compliance with this provision of the Order.

3. **Within 30 days from the date of this Order**, submit a restoration plan to DES for review and approval. Have the restoration plan prepared and stamped by a certified wetland scientist. The plan should include provisions for the removal of the culvert and sedimentation from the stream channel and for the restoration of the stream banks and wetlands on the Property and include the following:

a. Existing conditions and land topography with dimensions drawn to scale including wetland boundaries delineated in accordance with the 1987 Army Corps of Engineers Wetland Delineation Manual;

b. Proposed conditions after re-establishing the jurisdictional area;

c. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;

d. A detailed description of the proposed planting plan for the stabilization and re-

vegetation of the restoration area and of the method of control of invasive species such as purple loosestrife (Lythrum salicaria) and common reed (Phragmites australis);

e. A description of the proposed restoration sequence detailing the methods for accomplishing restoration and including an anticipated restoration compliance date;

f. A description of how impacts to the Blanding's Turtle, a "Species of Concern" in New Hampshire, will be avoided/minimized; and

g. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.

4. Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.

5. Implement the restoration plan after receiving written approval from and as conditioned by DES.

6. Monitor and maintain all existing erosion controls until restoration is completed and the site is permanently stabilized. Submit photographs to DES mounted on 8.5" x 11" white paper by the last day of each month documenting compliance with this provision of the Order.

7. A Standard Dredge and Fill application must be filed and a permit obtained for any proposed crossing in this location. Any application will be reviewed, approved or denied, based on the regulations in place at the time of filing.

8. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Stacey Herbold, Compliance Investigator
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: sherbold@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or request for reconsideration of the Order will not automatically relieve Mr. or Mrs. Sliva of their obligation to comply with the Order.

G. Other Provisions

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. and Mrs. Sliva remain obligated to comply with all applicable requirements. DES will continue to monitor the Slivas' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7006 0100 0005 8153 5221

cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Town of Loudon Board of Selectmen and Conservation Commission