

**Appendix G:
DEC Settlement**

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March 17, 2010

VIA EMAIL AND MAIL

Lemuel M. Srolovic, Esq.
Chairperson
New York State Freshwater
Wetlands Appeals Board
625 Broadway, Room 145
Albany, New York 12233

RE: Scenic Hudson, Inc. Notice of Appeal
FWAB # 09-03

Dear Mr. Srolovic:

Enclosed please find a stipulation signed by the attorneys for Scenic Hudson and DEC discontinuing the above-referenced appeal. If you need anything further to discontinue the case, please let me know.

Sincerely,


John W. Caffry

JWC/jjb
enc.

cc: Jeffrey Anzevino, Scenic Hudson
Richard Ostrov, Esq.
Paul M. Freeman, Esq.
(enc.)

NEW YORK STATE
FRESHWATER WETLANDS APPEALS BOARD

In the Matter of Scenic Hudson, Inc.
Appellant,

**STIPULATION TO
DISCONTINUE APPEAL**

-against-

No. 09-03

Alexander B. Grannis, Commissioner, New
York State Department of Environmental
Conservation,

Respondent.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, being the attorneys of record for parties to the above-entitled appeal, **that the above-entitled appeal is hereby discontinued**. This Stipulation is made upon the following terms and conditions and is subject to, and contingent upon, such conditions:

1. The Department of Environmental Conservation ("DEC") agrees that it shall provide Scenic Hudson, Inc. ("SH") with prompt notice upon the initial filing by any person or party of any application for a Freshwater Wetlands Act permit, or the modification or amendment of any existing Freshwater Wetlands Act permit (regardless of whether or not said application is deemed to be complete), in the South Bay wetland in the Town of

Greenport and City of Hudson, Columbia County (Freshwater Wetland No. HS-2) ("South Bay").

2. In connection with any such permit application, SH may submit such comments and information as it deems to be appropriate, including, but not limited to, the following documents:

1. Hudsonia report entitled "Biological Surveys of a Transect through South Bay and Adjoining Uplands", prepared for Scenic Hudson, dated October, 2008;
2. NYS Department of State, Coastal Resources Division, Draft [or final, when approved] Significant Coastal Fish and Wildlife Area Report;
3. Department of State Coastal Consistency ruling on St. Lawrence Cement proposal, dated April 19, 2005;
4. DEC study entitled "Hudson South Bay Hydrology Studies", by John Ladd and Dan Miller, Hudson River National Estuarine Research Reserve, dated April 9, 2008;
5. Preliminary Habitat Assessment for Reptile and Amphibian Species of Conservation Concern at Hudson South Bay by J.G. Spider Barbour, Ecological Consultant, dated 2007;
6. Department of State map of the Coastal Zone boundary; and
7. Draft [or final, when adopted] City of Hudson Local Waterfront Revitalization Plan/EIS.

DEC shall then consider whether or not to make such documents part of the Record in reviewing such application.

3. The Permit¹ which is the subject of this appeal is limited to the pavement of two hundred +/- feet of the causeway

¹ Freshwater Wetlands Permit ID 4-1006-00060/00001 and Part 608 Water Quality Certification ID 4-1006-00060/00002, collectively referred to herein as the "Permit."

in the adjacent area of the South Bay wetland, and limited clearing of certain ditches outside of the wetland and adjacent area. It does not authorize any other activities in South Bay that would be jurisdictional under the Freshwater Wetlands Act.

4. The issuance of the Permit was not, and should not be construed to be, an endorsement by DEC of any particular truck route or alternative truck route to be used by O&G Industries, Inc. (the "Permittee"), as part of its operations in the Town of Greenport and City of Hudson.

5. The issuance of the Permit was an Unlisted Action under the State Environmental Quality Review Act ("SEQR") and no coordinated SEQR review was conducted in connection therewith. DEC did not act as lead agency in any SEQR review related to the Permit.

6. The issuance by DEC of a SEQR negative declaration in connection with the Permit is not, and should not be construed to be, binding on any other agency with jurisdiction over the activities of the Permittee in or near South Bay.

7. The issuance by DEC of a SEQR negative declaration in connection with the Permit is not, and should not be construed to be, a substitute for any other agency's SEQR review of any action involving South Bay by any such agency, and the issuance of the Permit is not a substitute for the permit authority of any other agency with jurisdiction over the activities of the Permittee in or near South Bay.

8. DEC will monitor the activities of the permittee in South Bay pursuant to the Permit, as needed.

9. The undersigned each represents that he is fully authorized to execute this Stipulation.

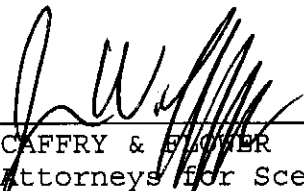
10. This Stipulation may not be amended except by a writing signed by the party against whom such amendment is sought to be enforced.

11. This Stipulation shall be binding upon the parties, their successors, and assigns.

12. This Stipulation may be enforced pursuant to CPLR § 2104.


IN WITNESS WHEREOF, the attorneys for the parties hereto have signed this Stipulation on the dates written below.

Dated: March 16, 2010



CAFFRY & FLOWER
Attorneys for Scenic Hudson, Inc.
Leah Kelly, Of Counsel
100 Bay Street
Glens Falls, New York 12801
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Dated: March 15, 2010



Richard Ostrov
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