

**STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violation of Articles 17, 19, 27, 37 and 71 of the Environmental Conservation Law of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), and Article 12 of the Navigation Law by:

RULING  
DEC Case No.D1-1201-04-05

OTSEGO AUTO CRUSHER, LLC and  
DONNA LEE TYRELL DBA AUTO 2,

Respondents

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**Procedural Background**

By motion dated May 17, 2005, respondent Otsego Auto Crusher, LLC ("Otsego") moved to sever the enforcement action brought against Otsego from the enforcement matter brought against Donna Lee Tyrell DBA Auto 2 (Tyrell)<sup>1</sup> by the NYS Department of Environmental Conservation (Department, DEC). The motion was sent to the DEC's Office of Hearings and Mediation Services and assigned to Administrative Law Judge Molly T. McBride. The Department opposed the motion by affirmation of Benjamin A. Conlon, Esq., associate attorney for the Department, dated May 23, 2005. Respondent Otsego replied to the Department's opposing affirmation by reply affirmation dated June 1, 2005.

The action was commenced by Notice of Hearing and Complaint dated April 15, 2005. The complaint alleges that respondent Otsego violated Articles 17, 19, 27, 37 and 71 of 6 NYCRR and the Navigation Law by causing petroleum releases. Respondent Tyrell owns and operates a business at 1368 U.S. Route 11 in the Town of Hastings, Oswego County, New York (site). It is alleged that the

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<sup>1</sup>Respondent Tyrell has not responded to the motion and the Office of Hearings has not been advised if Tyrell has appeared in the enforcement action.

petroleum releases occurred at this site and that Otsego was responsible for releases when it operated a mobile car crusher and front end loader at the site between February 28, 2002 and March 15, 2002. The Complaint alleges that a Department Environmental Conservation Officer (ECO) observed an Otsego trailer, off the site, transporting crushed vehicles leaking waste oil and/or transmission fluid.

### Discussion

The site in question is an auto/metal scrap yard owned by respondent Tyrell. Otsego operated a mobile car crusher and a front end loader at the site for two weeks to crush vehicles and take them away for scrap. The Department's complaint alleges the following: (1) petroleum products were spilled onto the ground at the site, (2) the spills were not reported, (3) solid waste was buried at the site and, (4) a solid waste facility was operating without a permit. The solid waste violations are alleged against Tyrell only. The complaint is unclear but, my reading of it is that the violations alleged regarding Tyrell are not limited to the two-week period that Otsego was on the site. The Department is seeking a fine of \$100,000 from Otsego, a fine of \$350,000 from Tyrell and an order requiring both parties to remediate the site.

Based upon the information before me at this time, it appears that case against the two respondents could be quite different. It is alleged that the Otsego's violations occurred over a two week period, therefore, the proof against Otsego will be limited to that time frame and the operation of the crusher and front loader only.

The Department has already submitted supporting depositions from 3 Otsego employees who claim that the gas tanks on the vehicles were emptied prior to processing and that Tyrell was responsible for removing freon from air conditioners before Otsego did it work. Also, the employees stated that radiator hoses were cut before the cars were processed, although one employee admitted to seeing anti-freeze spill from the vehicles during crushing. Apparently engine oil and transmission fluid were not removed before crushing. The Department has acknowledged that its observations of Otsego causing a spill occurred off the property as crushed vehicles were transported from the site.

Both Otsego and the Department have indicated that Tyrell is not cooperating with this matter. No such claims are being made

with respect to Otsego.

Section 622.6(c) of 6 NYCRR governs motion practice. Section 622.6(c) reads, in part, "(1) Motions and requests made at any time must be part of the record. Motions and requests made prior to the hearing must be filed in writing with the ALJ and served upon all parties." Otsego moved to sever the enforcement action against it from the action against respondent Tyrell. 6 NYCRR 622.10(e)(2) allows for severance of a claim as well as CPLR 603. In order to avoid prejudice or to achieve administrative efficiency, may order a severance of the hearing and hear separately any issue or any party to the proceeding". 6 NYCRR 622.10(e)(2).

The Tyrell respondent has not cooperated in this matter and is presently denying Department Staff entry to the property. The Department's claim against Otsego could possibly be resolved while the Department continues to pursue a claim against a difficult respondent. The condition of the site outside the two-week time frame that Otsego was present will be outside Otsego's knowledge and not related to its actions. The proof will be limited to those two-weeks with regards to Otsego, but not against Tyrell. The Department has not indicated how long the spills continued for at the site or how long the debris was being buried by Tyrell or how extensive that debris clean up is estimated to be. However, that proof will not be offered against Otsego.

#### Ruling

Respondent Otsego's request to sever the Department's enforcement action against it from the matter against Tyrell is granted.

\_\_\_\_\_/s/\_\_\_\_\_  
Molly T. McBride  
Administrative Law Judge

Dated: July 8, 2005  
Albany, New York