

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation Law  
("ECL") Article 19 and Title 6 of the  
Official Compilation of Codes, Rules  
and Regulations of the State of  
New York ("6 NYCRR")

**ORDER ON CONSENT**

- by -

File No. R4-2008-0728-116

Animal Protective Foundation  
53 Maple Ave  
Scotia, NY 12302

Respondent

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WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the control of air quality pursuant to ECL Article 19 and applicable regulations.
2. Respondent, Animal Protective Foundation, operates a facility located at 53 Maple Ave, Scotia, New York ("facility").
3. Respondent operates a cremation unit in the ordinary course of their business operation.
4. Respondent was issued a Certificate to Operate the cremation unit on December 12, 1991 (DEC Permit No. 4-4222-00057/00003). The loading rate approved during the most recent stack test is 120 lbs/hr.
5. On June 30, 2008 and July 2, 2008, Department staff conducted investigations of the facility.
6. Respondent has submitted to the Department, a registration application pursuant to 6 NYCRR 201.1.2. This application includes all air emission sources, emission points, and a list of all exempted activities at the facility.
7. Respondent has submitted to the Department, annual inspections and maintenance records of the crematory as per regulations at 6 NYCRR 219-4.11, for the 2008 calendar year.
8. Respondent maintains a logbook of all malfunctions of the crematory unit including alarm occurrences.

### First Violation

9. Regulations at 6 NYCRR 201 - 4.3 (a) provide that “on the effective date of this Subpart, all valid certificates to operate for a given facility subject to the provisions of this Subpart will be extended indefinitely.”
10. On June 30, 2008, Department staff reviewed the records for the cremation unit and determined that for the period of June 20, 2008 through June 27, 2008, the loading rate exceeded the approved rate of 120 lbs/hr for each of the six times that it was operated during that period.
11. Respondent violated regulations at 6 NYCRR 201 - 4.3(a) by exceeding the loading rate of 120 lbs/hr for each operation of the cremation unit from June 20, 2008 through June 27, 2008.

### Second Violation

12. Regulations at 6 NYCRR 219 - 4.11 provide that “each owner or operator of a permitted crematory facility must annually inspect that facility and submit a report to the commissioner, certifying that the condition and operation of that facility, including the calibration of all instrumentation, meet manufacturer's specifications.”
13. Respondent submitted the 2007 annual inspection of their cremation unit in June of 2007, at the request of Department staff, however had not submitted reports of annual inspections, to the Department, prior to that date.
14. Respondent violated regulations at 6 NYCRR 219 - 4.11 by failing to submit to the Department, reports of annual inspections of their cremation unit.
15. ECL Section 71-2103(1) provides that: “Except as provided in section 71-2113, any person who violates any provision of Article Nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”
16. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein.
17. This Order resolves all previous air violations as of the effective date of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Civil Penalty

With respect to the aforesaid violations, a civil penalty in the amount of FIVE HUNDRED DOLLARS(\$500) is hereby assessed against the Respondent payable by certified or bank check made payable to the NYS DEC.

II. Environmental Benefit Project

In addition to the civil penalty cited above, Respondent agrees to the performance of an Environmental Benefit Project (“EBP”). The purpose of the EBP is to reduce the overpopulation of cats by providing veterinary services to low income residents in lower economic areas. The EBP shall include the following:

1. Within one year of the effective date of this Order, Respondent shall provide veterinary services to 43 cats belonging to low income residents. These services shall include spay/neutering, rabies vaccination and FELV/FIV testing at a cost to the Respondent of \$70 per cat.
2. Respondent shall enlist the assistance of local rescue groups in determining and selecting individuals who meet the economic and geographic criteria so as to qualify for the free services.
3. The Department reserves the right to inspect APF records to verify compliance with the EBP set forth in this Order.
4. Any public statement, oral or written, made by Respondent making reference to the EBP shall include the following language: “This project was performed as part of an Environmental Benefit Project.”

III. Binding Effect

The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

IV. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

V. Indemnification

Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, their employees, servants, agents, successors or assigns.

VI. Modification

No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VII. Access

Respondent shall allow duly authorized representatives of the DEC access to the site during normal hours of operation.

VIII. Communications

All communications except where otherwise specifically directed should be sent to:

For Department:  
Regional Air Pollution Control Engineer  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

IX. Effective Date

The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. Review of Submittals

A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XI. Purpose

This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

XII. Compliance

Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

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

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall operate the cremation unit at or below 120lb/hr loading rate as approved in the most recent stack test dated February 6, 2004. The loading rate shall be calculated by dividing the total cremation load by the total time of cremation (master cycle/afterburner set-time). The loading rate shall not exceed 120 lbs/hr unless a subsequent stack test is submitted and approved demonstrating a greater loading rate.
2. Respondent shall submit to the Department beginning for the 2009 calendar year and continuing thereafter, annual inspections and maintenance records of the crematory as per regulations at 6 NYCRR 219-4.11. These records shall include but not be limited to, any repair of the refractory brick and interior of the unit as well as any repair and maintenance to the stack. Respondent shall submit those documents to:

Attn: RAPCE  
Division of Air Resources  
1130 North Westcott Road  
Schenectady, NY 12306-2014
3. As of the effective date of this Order, Respondent shall calibrate the opacity meter during all scheduled inspections/maintenance.
4. Respondent shall continue to maintain the logbook of all malfunctions of the crematory unit. Logbook entries shall include the date, start time of cremation, total load, and length of each cremation run. Temperature Charts shall indicate date, time, and location of each malfunction and each alarm occurrence.