

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED

9590 9403 0269 5155 5531 71

July 1, 2015

Charles Casale
551 Main Avenue
Wynantskill, NY 12198

Re: Order of Consent
R4-2015-0529-56

Dear Mr. Casale:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: V. Schmitt



Department of
Environmental
Conservation

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

In the Matter of the Violations
of Article 27 of the New York State
Environmental Conservation Law,
and Title 6, Part 360
et seq. of the Official
Compilation of Codes, Rules and
Regulations of the State of New York,

ORDER ON CONSENT
File No. R4-2015-0506-56

- by -

Charles Casale
551 Main Avenue
Wynantskill, NY 12198

Respondent

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation ("Department") is empowered to regulate the operation of solid waste management facilities pursuant to ECL Article 27.
2. Respondent, Charles Casale, owns/operates Hudson River Recycling, a processing facility located at Kings Road, Troy, New York (Rensselaer County) ("facility").
3. The facility operates pursuant to a 6 NYCRR Part 360 registration (42W03) to process uncontaminated, unadulterated wood and recognizable concrete, asphalt, brick and soil.
4. Department staff inspected the facility on April 10, 2015.

FIRST AND SECOND VIOLATION

5. Regulations at 6 NYCRR 360-16.1(d)(1) provide that:
"(1) The following regulated solid waste management facilities are subject to the registration provisions of subdivision 360-1.8(h) of this Part, rather than the permit requirements of this Part, provided all the applicable requirements of this Subpart and subdivision 360-1.8(h) of this Part are met:

(i) a facility receiving and processing only recognizable uncontaminated concrete and other masonry waste (including steel or fiberglass reinforcing embedded in concrete), asphalt pavement, brick, soil or rock that has not been in contact with a spill from a petroleum product, hazardous waste, or industrial waste, and that is not commingled with any other solid waste;

(ii) a facility receiving and processing only uncontaminated and unadulterated wood; or

(iii) a combination of the facilities listed in subdivision (b) and subparagraphs (i) and (ii) of this Subpart provided the materials of the subdivision and each subparagraph are processed and stored separately.”

6. Regulations at 6 NYCRR 360-1.14(e)(2) provide that:

“If solid waste not authorized by the department to be treated, disposed of or transferred at the facility is observed in the solid waste at the facility or delivered to the facility, the facility owner or operator may refuse to accept the waste. If the owner or operator accepts the waste, the owner or operator must remove it, segregate it, and provide to the department a record identifying that waste and its final disposition. The department must be notified of each incident in the annual report and records of each incident must be available for department review. Any unauthorized waste accepted by the facility owner or operator must be managed in accordance with applicable federal or State laws and regulations.”

7. At the time of the inspection, Department staff observed that approximately 400 cubic yards of unauthorized solid waste has been received and is stored in the uncontaminated, unadulterated wood processing area of the facility. The unauthorized waste includes: wallboard, insulation, foam insulation board, plywood, particle board, pressure treated lumber, painted boards, plastic buckets and pipes, metal debris, wiring, fabric packaging and other cloth items, cardboard, plastic sheeting and packaging, tarps, shingles, one mattress, and two tires.

8. Respondent's acceptance of this type of unauthorized material is a violation of regulations at 6 NYCRR 360-16.1(d)(1) and 6 NYCRR 360-1.14(e)(2).

THIRD VIOLATION

9. Regulations at 6 NYCRR 360-16.4(f)(1) provide that:

“Adequate storage space for incoming C&D debris must be available at the facility. Unauthorized solid waste material must be removed within 24 hours.”

10. Unauthorized solid waste was received at the facility and was not removed within 24 hours.

11. By failing to remove the unauthorized waste within 24 hours, Respondent violated regulations at 6 NYCRR 360-16.4(f)(1).

FOURTH VIOLATION

12. Regulations at 6 NYCRR 360-16.1(d)(1)(iii) provide that:

“a combination of the facilities listed in subdivision (b) and subparagraphs (i) and (ii) of this Subpart provided the materials of the subdivision and each subparagraph are processed and stored separately.”

13. At the time of the inspection, Department staff observed that the pile of unprocessed material stored in the wood processing area contains concrete slabs and concrete blocks.

14. As the concrete material was not segregated from the wood material and stored in a separate area, Respondent violated regulations at 6 NYCRR 360-16.1(d)(1)(iii).

FIFTH VIOLATION

15. Regulations at 6 NYCRR 360-16.4(f)(3) provide that:

“Processed or unprocessed C&D debris storage piles shall not exceed 20 feet in height, and the area of the storage piles at the base of the pile shall not exceed 5,000 square feet unless otherwise authorized by the department. Piles may not be located in excavations or be below normal grade without prior written approval by the department. A minimum separation distance of 25 feet must be maintained between adjacent piles, and a minimum separation distance of 50 feet must be maintained between piles and property boundaries unless otherwise authorized by the department. Notwithstanding these requirements, minimum separation distances must also be in accordance with any more stringent requirement of the New York State Uniform Fire Protection and Building Code, Title 9(B) NYCRR and local building and fire codes.”

16. At the time of the inspection, Department staff observed that a minimum separation distance of 25 feet is not maintained between the pile of processed debris and the pile of unprocessed debris located in the wood processing area.

17. Respondent's failure to maintain a minimum distance of 25 feet between the pile of processed debris and the pile of unprocessed debris at the facility is a violation of regulations at 6 NYCRR 360-16.4(f)(3).

SIXTH VIOLATION

18. Regulations at 6 NYCRR 360-1.14(d) provide that:

“Access to and use of the facility must be strictly and continuously controlled by fencing, gates, signs, natural barriers or other suitable means.”

19. At the time of the inspection, Department staff determined that access to the facility is not strictly and continuously controlled.

20. Respondent's failure to control access to the facility is a violation of regulations at 6 NYCRR 360-16.4(f)(3).

SEVENTH VIOLATION

21. Regulations at 6 NYCRR 360-16.1(d)(2)(ii) provide that:

“the facility must comply with the reporting and recordkeeping requirements of subdivision 360-16.4(i) of this Subpart.”

22. Regulations at 6 NYCRR 360-16.4(i) provide that:

“Reporting and recordkeeping. In addition to the requirements of sections 360-1.4(c) and 360-1.14(i) of this Part, the facility owner or operator must:

(1) Prepare and submit an annual report on forms prescribed by or acceptable to the department with the department's central office and the office of the department administrating the region within which the facility is located, no later than 60 days after the first day of January following each year or portion thereof of operation. This report must include a monthly summary of the daily records accounting for the facility total throughput and must include details of any equipment added to the facility and any occurrences which have led to change in facility procedures during that reporting period and must specify what those changes were.

(2) Maintain daily records for facility monitoring. This monitoring information must include a daily log specifying the date; signature of the individual recording the information; the quantity, description and origin of C&D debris received at the facility; the quantity and destination of recyclables sent from the facility by major category; the quantity and destination of material used as an alternative daily cover material; and the quantity and destination of C&D debris sent from the facility for disposal. These records must account for all materials handled at the facility.”

23. The Department has not received the facility's 2014 annual report which was due on March 9, 2015.

24. Respondent is in violation of regulations at 6 NYCRR 360-16.4(i) by failing to submit his 2014 annual report within the timeframe provided for in that regulation.

General

25. ECL 71-2703 provides that any violator of Articles 3 or 7 of the provisions of Article 27 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to seven thousand five hundred dollars (\$7,500) for each violation and an additional penalty of not more than \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

26. Respondent consents to the issuance and entry of the foregoing Order, waives the right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Penalty

Respondent is assessed a civil penalty in the amount of TEN THOUSAND DOLLARS (\$10,000). FIVE THOUSAND DOLLARS (\$5,000) of the civil penalty is due upon the return of the signed and notarized copy of this Order to the Department. The balance of the penalty, FIVE THOUSAND DOLLARS (\$5,000), shall be suspended, and shall not be payable, provided that Respondent complies with the requirements in the Schedule of Compliance.

In the event that the Respondent fails to fully comply with the requirements in the Schedule of Compliance, the entire portion of the suspended penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties and relief for violations of this Order by Respondent. Respondent shall deliver the suspended penalty amount to the Department within twenty business days after receipt of such written notice to the Respondent.

II. Schedule of Compliance

The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order on Consent and enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, contact and phone number and the PBS registration identification number.

III. Force Majeure

Respondent shall not be in default of compliance with this Order if it is unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war, strike, riot or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify DEC in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

IV. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Materials Management Engineer.

V. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

VI. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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, his directors, officers, employees, servants, agents, successors or assigns.

VIII. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

IX. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and his successors (including successors in title) and assigns.

X. Modification

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

XI. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XII. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XIII. Reservation of Rights

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, his officers, directors, agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XIV. Multiple Respondents

If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: July 1, 2015
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 10 days of the effective date of this Order, Respondent must remove all of the remaining unauthorized waste materials and dispose of them properly at an authorized disposal facility. Respondent shall submit to the Department, receipts identifying the waste and its final disposition.
2. Within 7 days of the effective date of this Order, the concrete material must be segregated from the wood material and stored in a separate area.
3. Within 30 days of the effective date of this Order, Respondent must develop and implement a program to teach the facility's staff to recognize, remove, and report receipt of solid waste not authorized by the Department to be treated, disposed of or transferred at the facility. Training records must be made available to the Department upon request.
4. Within 30 days of the effective date of this Order, Respondent must ensure that access to the facility is strictly and continuously controlled.
5. Within 15 days of the effective date of this Order, the 2014 annual report shall be submitted to the Department.