

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

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Articles 17 and 27,
Navigation Law ("NL") Article 12,
and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR)

- by -

ORDER ON CONSENT
File No. R4-2009-0330-59

Robert Ciembroniewicz

Respondent

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation ("Department") is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities, pursuant to ECL Article 27 and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 360, *et seq.*
2. New York State Department of Environmental Conservation ("DEC") has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 12 of the Navigation Law ("NL") and Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated pursuant thereto.
3. Respondent, Robert Ciebroniewicz, owns and operates a towing and auto crushing facility known as Bob's Towing and Crushing located at 3600 Western Turnpike, Altamont, New York 12009, Albany County ("facility").

FACTS

4. On June 27, 2008, Respondent entered into an Order on Consent (R4-2007-0531-62) (“Order”). That Order required, in part, that Respondent:

1. Respondent shall remove 16,000 waste tires per calendar year. This is in addition to tires removed as part of the active car crushing operation. In the event that Respondent removes more than 16,000 tires during any one calendar year, the amount in excess of 16,000 can be applied toward the following calendar year’s total. Respondent shall provide the Department with reports of tires removed and receipts for transport/disposal/recycling by March 31 for the previous year, until such time as the waste tires are completely removed from Respondent’s property.

2. By September 1, 2008, Respondent shall have a concrete pad with controls for run-on and run-off, constructed at the facility. All fluid removal activities shall take place on the concrete pad. Lead acid battery storage shall be on pallets and on a concrete surface. Furthermore, all vehicle waste fluids shall be placed in properly labeled containers and stored on a concrete surface.

3. Upon execution of this Order, Respondent, when conducting crushing activities using his own crusher, shall conduct such crushing activities on the concrete pad.

4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a completed SPDES application.

5. On March 9, 2009, Department staff conducted an inspection of Respondent’s facility.

VIOLATIONS

6. On March 9, 2009, Department staff observed leaking containers of petroleum products which were stored on the concrete pad, resulting in petroleum sheens on ponded water on the pad, which was flowing off the pad and into surface water run-off across and off the site.

7. Regulations at Article 12, Section 173 of the NL prohibits the discharge of petroleum.

8. Respondent's discharge of petroleum is a violation of regulations at Article 12, Section 173 of the NL.

9. Department staff reviewed their records and discovered that Respondent did not provide the Department with reports of tires removed and receipts for transport/disposal/recycling by March 31, 2009.

10. Respondent's failure to provide the Department with reports of tires removed and receipts for transport/disposal/recycling by March 31, 2009 is a violation of Item #1 of the Order's Schedule of Compliance.
11. On March 9, 2009, Department staff observed petroleum contamination of surface water as a result of Respondent's failure to control run-on and run-off from the pad.
12. Respondent's failure to control run-on and run-off from the concrete pad is a violation of Item #2 of the Order's Schedule of Compliance.
13. On March 9, 2009, Department staff observed that the crusher has not been moved to the concrete pad therefore crushing activities are not being conducted on the concrete pad.
14. Respondent's failure to conduct all crushing activities on the concrete pad is a violation of Item #3 of the Order's Schedule of Compliance.
15. Respondent failed to submit a completed SPDES application to the Department.
16. Respondent's failure to submit a completed SPDES application to the Department is a violation of Item #4 of the Order's Schedule of Compliance.
17. Regulations at 6 NYCRR 703.2 provide that "*no residue attributable to sewage, industrial wastes or other wastes, nor visible oil film nor globules of grease shall be released into the environment.*"
18. Respondent violated regulations at 6 NYCRR 703.2 by releasing petroleum contaminated discharge into the environment.
19. Regulations at ECL 17-0501 provide that "*it shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.*"
20. Respondent violated regulations at ECL 17-0501 by permitting petroleum contaminated run-off to drain off the concrete pad and into surface water run-off across and off the site.
21. Regulations at ECL 17-0505 provide that "*the making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by section 17-0701 or title 8 hereof are prohibited.*"
22. Respondent violated regulations at ECL 17-0505 by failing to obtain a SPDES permit.

GENERAL

23. Regulations at ECL §71-1929 provides, among other things, for a civil penalty of up to \$37,500 for violations of the provisions of Article 17 of the ECL cited herein, regulations promulgated thereunder, and for an additional \$37,500 for each day on which such violations continue, and that such violations may be enjoined.
24. Regulations at ECL § 71-2703 provide 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.
25. NL Section 192 provides that any person who violates any of the provisions of Article 12 of the NL, or any rule promulgated thereunder, or who fails to comply with any duty created by this article, shall be subject to a penalty of not more than twenty-five thousand dollars (\$25,000) for each offense.
26. All terms, conditions or provisions of the prior Order on Consent are incorporated into this Order on Consent. This Order on Consent's Schedule of Compliance is superceded by this Order on Consent's Schedule of Compliance.
27. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

PENALTY

I. In respect to the aforesaid violation, a civil penalty in the amount of TWENTY ONE THOUSAND DOLLARS (\$21,000) is hereby assessed against the Respondent of which \$6,000 shall be payable to the New York State Department of Environmental Conservation by money order or certified check. Payment of the civil penalty is due in accordance with the following schedule:

1. \$500.00 with the return of the signed and notarized copy of this Order;
2. \$500.00 by July 1, 2009;
3. \$500.00 by August 3, 2009;
4. \$500.00 by September 1, 2009;
5. \$500.00 by October 1, 2009;
6. \$500.00 by November 2, 2009;
7. \$500.00 by December 1, 2009;
8. \$500.00 by January 1, 2010;
9. \$500.00 by February 1, 2010;

10. \$500.00 by March 1, 2010;
11. \$500.00 by April 1, 2010;
12. \$500.00 by May 3, 2010

The balance (\$15,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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

III. The terms of 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.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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, his directors, officers, employees, servants, agents, successors or assigns.

V. 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.

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

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

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

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

IX. This Order is deemed effective on the date signed by the Department.

X. 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 or permits issued 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, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's 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.

XI. 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.

XII. 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

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives his right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Robert Ciembroniewicz

DATE:_____

STATE OF NEW YORK)
)ss.:
COUNTY OF)

On the__day of _____in the year_____ before me, the undersigned, a Notary Public in and for the State, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Beginning immediately upon the execution of the Order, Respondent shall remove from the site, a minimum of 4000 waste tires per week (Monday through Sunday). No later than the following Friday, Respondent shall provide the Department through the Region 4 Attorney, documentation of the number of waste tires removed for the preceding week. Documentation shall be in the form of signed receipts from the approved facility accepting the waste tires for processing and/or disposal.
2. Within 60 days of the effective date of the Order, Respondent shall relocate fluid removal activities to a location physically removed from property boundaries which are proximate to resident neighbors. The new location shall have provisions for an impervious surface as required by Article 27 Title 23. Fluid removal and storage shall be conducted in a manner which assures no release of collected fluids to the environment or off site petroleum/gasoline odor impact to facility neighbors.
3. Within 60 days of the effective date of this Order, Respondent shall submit to the Department, a completed Stormwater Pollution Prevention Plan, which includes the approved necessary modifications to the site, in accordance with the requirements specified in the SPDES Multi Sector General Permit for Stormwater Associated with Industrial Activity (GP-0-06-002) and file an application (NOITT) for coverage.
4. Nothing in this Order shall release Respondent from any of the requirements of Article 27 Title 23.