

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Article 27  
of the Environmental  
Conservation Law (ECL)

**ORDER ON CONSENT**

File No. 4-2008-0902-133

- by -

Robert Compton

Respondent

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WHEREAS:

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, Robert Compton, 45 Timm Road, Grand Gorge, New York, owns a parcel of land on Rt 23A, Prattsville, New York (“site”)

3. On August 11, 2008, Department staff observed eight roll offs at the site containing construction and demolition debris.

4. Regulations at 6 NYCRR 360-1.2(b)(172) define a transfer station as:

Transfer station means a solid waste management facility other than a recyclables handling and recovery facility, used oil facility, or a construction and demolition debris processing facility, where solid waste is received for the purpose of subsequent transfer to another solid waste management facility for further processing, treating, transfer or disposal. Transfer of solid waste from vehicle to vehicle for the purpose of consolidating loads, as part of the initial collection process, is not considered a transfer station provided the transfer activity occurs along the collection route where the point of transfer changes from day to day...

5. Regulations at 6 NYCRR 360-1.2(b)(158) define a solid waste management facility as including a transfer station:

Solid waste management facility means any facility employed beyond the initial solid waste collection process and managing solid waste, including but not limited to: storage areas or facilities; transfer stations; rail-haul or barge-haul facilities; landfills; disposal facilities; solid waste incinerators; refuse-derived fuel processing facilities; pyrolysis facilities; C&D debris processing facilities; land application facilities; composting facilities; surface impoundments; used oil storage, reprocessing, and rerefining facilities; recyclables handling and recovery facilities; waste tire storage facilities; and regulated medical waste treatment facilities. The term includes all structures, appurtenances, and

improvements on the land used for the management or disposal of solid waste.

6. Regulations at 6 NYCRR 360-1.7(a)(1)(i) provides that no person shall: “*construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to this Part.*”

7. Respondent’s operation of the transfer station at the site is a violation 6 NYCRR 360-1.7(a)(1)(i).

8. ECL Section 71-2703(1) generally provides for a maximum civil penalty of \$7,500 for the initial day of violation of Article 27 and regulations, permits and orders issued thereunder and a maximum of \$1,500 per day for each day thereafter...and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

7. 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 has agreed to be bound by the terms, provisions and conditions contained herein.

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

I. Civil Penalty Respondent is hereby assessed a civil penalty in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) for the violations stated herein. ONE THOUSAND FIVE HUNDRED DOLLARS (\$1500) of the civil penalty is payable with the return of the signed and notarized Order. Payment shall be made by bank or certified check or money order made out to the Department of Environmental Conservation and returned with the signed and notarized Order. SIX THOUSAND DOLLARS (\$6000) of the civil penalty is suspended conditioned on Respondent’s compliance with the Schedule of Compliance. Respondent shall pay the suspended penalty within 15 days of receipt of a Notice of Violation setting forth the violations of this Order.

II. Schedule of Compliance Respondent shall comply with the attached Schedule of Compliance. The Schedule of Compliance is incorporated and made part of the provisions, terms, and conditions of this Order.

III. Full settlement of Department Actions This Order shall constitute full settlement of the violation in Paragraph 7.

IV. Submissions. All reports, requests and submissions herein required shall be made in triplicate to the Region 4 Headquarters, New York State Department of Environmental Conservation, 1130 North Westcott Ave., Schenectady, New York 12306, Attention: Regional Solid Waste Engineer.

V. Access. For the purpose of insuring compliance with this Order and for purposes of summary abatement or any other remedial or removal activity initiated by the Department or state, duly authorized representatives of this Department shall at all reasonable times be permitted access to the site and areas in the vicinity of the site.

VI. Other Remedies. (a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its employees, servants, agents, officers, directors, shareholders, members, successors and assigns; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its employees, servants, agents, successors and assigns in the event that Respondent shall be in material breach of the provisions hereof; and (3) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) 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.

IX. Indemnification. Respondent 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 negligence of Respondent in the fulfillment or attempted fulfillment of the provisions hereof by Respondent, his employees, servants, agents, successors or assigns.

X. Binding Effect. The Respondent is liable for all the provisions of this Order and the provisions of this Order shall be deemed to bind Respondent, its agents, employees, successors and assigns, and all persons, firms and corporations acting under or for him.

VII. Entire Agreement. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph V above. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of his obligations to obtain such formal approvals as may be required by this Order.

VIII. Effective Date The effective date of this Order shall be the date it is executed by the Regional Director.

DATED: September , 2008  
Rotterdam, New York

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

BY:

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Eugene J. Kelly  
Regional Director  
Region IV

CONSENT BY RESPONDENT

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

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

## SCHEDULE OF COMPLIANCE

1. Within 10 days of the effective date of this Order, Respondent shall remove all construction and demolition waste and roll offs from the site and dispose or remove the solid waste to a permitted solid waste management facility. Receipts and proof of proper disposal or removal shall be provided to the Department within this same time frame.