

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 27 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. R4-2008-0619-94

Charles Fang
890 Boonton Ave.
Boonton, NJ 07005

Respondent

WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the collection, treatment and disposal of solid waste pursuant to ECL Article 27 and applicable regulations.
2. Respondent, Charles Fang, 890 Boonton Avenue, Boonton, New Jersey, is the sole member of Recycler's Zone L.L.C., the owner of property located at 2455 NY Route 20 (the former Tri H Auto), Carlisle, New York ("site").
3. On May 27, 2008 Department staff conducted an inspection of the site ("inspection").
4. During the inspection, Department staff observed that Respondent has approximately 1,500 waste tires stored on the site. Respondent does not have a permit to store the tires. There was also evidence of the urial of a storage shed and a mobile home on the site. Several piles of C&D debris and non-putrescible household waste with some auto parts were also observed.
5. 6 NYCRR 360-13.1(b) provides that no person shall engage in storing 1,000 or more waste tires at a time without first having obtained a permit to do so.
6. Respondent's storage of tires on the site without a permit is a violation of 6 NYCRR 360-13.1(b).
7. 6 NYCRR 360-1.5(a)(2) provides that no person shall dispose of solid waste except at

a disposal facility authorized to accept such waste for disposal.

8. Respondent's disposal of a storage shed, a mobile home, several piles of C&D debris and non-putrescible household waste with some auto parts on the site is a violation of 6 NYCRR 360-1.5(a)(2).

9. ECL §71-2703(1) provides that any person who violates any provision of title 3 or 7 of Article 27 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for a first violation and one thousand five hundred dollars (\$1,500) for each day the violation continues, and may be enjoined from continuing such violation.

10. 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:

I. In respect of the aforesaid violation, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) is hereby assessed against the Respondent. ONE THOUSAND DOLLARS (\$1,000) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, FOUR THOUSAND DOLLARS (\$4,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

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

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 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, his agents, his servants, his employees, his successors and his 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 violation alleged in this Order.

DATED: _____, 2008
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.

Charles Fang

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. On or before October 1, 2008, Respondent shall remove all waste tires from the site and provide the Department with documentation of proper disposal at a permitted facility.
2. Within 30 days of the effective date of this Order, Respondent shall excavate the areas on the site where the storage shed and mobile home are buried and remove such debris from the site. Respondent shall provide the Department with at least one week's notice of the excavation date so that Department staff may be present to monitor the excavation and removal of such debris.
3. On or before October 1, 2008, Respondent shall remove all waste piles from the site and provide proof to the Department that the front of the property has been secured to prevent further dumping on the site.