

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of Environmental Conservation Law,  
Article 19

**ORDER ON CONSENT**

- by -

File No. R4-2009-0826-139

Hanson Aggregates New York LLC  
Suite 1645  
300 E. John Carpenter Freeway  
Irving, Texas 13078

Respondent

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WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
2. Respondent, Hanson Aggregates New York LLC, Suite 1645  
300 E. John Carpenter Freeway, Irving, Texas 13078 owns and operates an asphalt plant in St. Johnsville, New York 13078 known as the St. Johnsville Quarry ("facility").
3. The facility is subject to a state facility permit (#4-2738-0004/00017 ("permit").
4. Regulations at 6 NYCRR 225-2.5(a) provides that "no person may initiate construction of a new emission source, or modification, or operate an air contamination source in which waste fuel is to be burned until all applicable provisions of this Subpart have been met and the necessary permits to construct and/or certificates to operate may have been issued in accordance with Part 201 of this Title."
5. Regulations at 6 NYCRR 225-2.6(d) provides that: "No owner or operator of a facility proposing to burn waste fuel or transporter of waste fuel may purchase, accept delivery, pick up or accept in trade any waste fuel unless the facility receiving or proposing to burn waste fuel meets the applicable requirements of this Subpart and the regulations\* promulgated pursuant to article 27, titles 7 and 9 and article 23, title 23 of the ECL and the transporter of waste fuel is permitted under 6 NYCRR Part 364."
6. Regulations at 6 NYCRR 201-5.4(a)(2) provides that: "Permit modifications and physical or operational changes to an existing stationary source are subject to the following procedures ...(2) Facility owners and/or operators must submit an application requesting such permit modifications and receive department authorization prior to making such modifications."

7. On or about the winter of 2008, Respondent installed a 10,000 gallon above ground waste fuel tank and supply system at the facility.
8. On July 7, 2009, the Respondent received a shipment of 6,500 gallons of waste fuel at the facility.
9. On July 8, 2009, the Department received a permit application from the Respondent to burn waste fuel and a permit was issued on July 31, 2009.

#### Violations

10. Respondent violated 6 NYCRR 225-2.5(a) and 6 NYCRR 201-5.4(a)(2) by modifying its facility to burn waste fuel without a permit.

#### Waiver of Hearing

11. 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 agrees 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. In respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) shall be assessed. Payment of the civil penalty by bank check made payable to the Department of Environmental Conservation is due with the return of the signed and notarized Order.

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

III. This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. 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.

V. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

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

VII. 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 fulfillment or attempted fulfillment of the provisions hereof by Respondent, his employees, his servants, his agents, his successors or his assigns.

VIII. 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.

IX. Compliance with the terms and conditions of this Order 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:

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Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1) Within thirty (30) days of the effective date of the Order, the Respondent shall demonstrate and submit the results to the Department that the emissions resulting from the use of the waste fuel comply with 6 NYCRR Part 200.6 and do not contravene any applicable ambient air quality standard.