

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 9029

October 26, 2018

Joe Niesluchowski
23260 State Highway 97
Hancock, NY 13783

Re: Order on Consent
R4-2017-0726-233

Dear Mr. Niesluchowski:

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

This will also acknowledge receipt of \$500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: G. Wilber, BECI
J. Weidman



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of
Article 27 of New York State Environmental
Conservation Law

ORDER ON CONSENT

R4-2017-0726-233

-by-

Joe Niesluchowski
23260 State Highway 97
Hancock, NY 13783

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (“the Department”) is a department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to inter alia, ECL 3-0301. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities pursuant to Article 27 of the New York State Department of Environmental Conservation Law (ECL).
2. Pursuant to authority granted to the Department under ECO Article 27, rules respecting the permitting, registration and operation of solid waste management facilities were promulgated at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 360 et seq.
3. Respondent, Joe Niesluchowski, owns a parcel of land located at 23260 State Highway 97, Hancock, New York 13783 (“site”).

Facts

4. On June 7, 2017 and July 11, 2017, Department staff inspected the site.

5. Department staff observed a pile, consisting of waste tires, pallets, cardboard, yard debris and wood chips at the site. The area in question was approximately 20 feet by 15 feet and was 15 feet in height. Respondent referred to the area as a “Rammed Earth.” The waste debris was stacked on the hillside next to Respondent’s residence, between the residence and State Highway 97. Several trees around the pile have been wired together with a cable. The Respondent stated there are roughly 350 tires of all sizes in the pile.
6. Regulations at 6 NYCRR 360-1.2 (a)(1) provide that *“Solid waste means, except as described in paragraph (4) of this subdivision, any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342, as amended (86 State. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 State. 923) except as may be provided by existing agreements between the State of New York and the government of the United States (see section 360-1.3 of this Subpart).”*
7. Regulations at 6 NYCRR 360-1.5 (a) provide that *“Except as provided for in Subparts 360-10 and 360-17 of this Part, no person shall dispose of solid waste in this State except at:
(1) a disposal facility exempt from the requirements of this Part; or
(2) a disposal facility authorized to accept such waste for disposal pursuant to this Part or to a department-issued or court-issued order.”*
8. Respondent did not have authorization to accept and dispose of solid waste at the site.

Civil Penalty

9. 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.

Waiver of Hearing

10. Respondent has affirmatively waived its right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on Consent (“Order”) pursuant and agrees to be bound by the terms, provisions and conditions herein.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

I. PENALTIES

In respect of the aforesaid violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) of which FIVE HUNDRED DOLLARS (\$500) shall be payable to the New York State Department of Environmental Conservation by money order, or check at the time this Order is signed, notarized and returned to the Department.

The balance TWO THOUSAND DOLLARS (\$2,000) shall be suspended so long as Respondent shall comply with 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 payable to the New York State Department of Environmental Conservation by money order, or certified check.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

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. STANDARD PROVISIONS

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: October 25 2018
Rotterdam, New York

Basil Seggos,
Commissioner
New York State Department of
Environmental Conservation

By:



Keith Goertz
Regional Director
Regional 4

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to:

Department of Environmental Conservation
Region 4, Attn: Karen Lavery
1130 North Westcott Road
Schenectady, NY 12306

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

Department of Environmental Conservation
Region 4, Attn: Karen Lavery
1130 North Westcott Road
Schenectady, NY 12306

Effective Date and Duration. The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

Access. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity. 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 resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modifications. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Settlement and Reservation of Rights

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in paragraph A above, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

Entire Agreement This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

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.

Schedule of Compliance

1. As of the effective date of this Order, Respondent shall immediately cease acceptance of any additional waste tires or unauthorized solid waste at the site.
2. By July 31, 2019, from the effective date of this Order, all waste tires and other unauthorized solid waste at the site must be removed, transported and disposed of at authorized facilities.
3. By August 1, 2019, Respondent must notify the Department in writing, that all waste tires and other unauthorized solid waste has been removed. Records and receipts for all waste tires and other unauthorized solid waste removed and transported from the site must be submitted to the Department within 30 days.