

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violation of  
Articles 17,19,27,37 & 71 of the Environmental  
Conservation Law ("ECL"),  
Article 12 of the Navigation Law, and  
Title 6 of the Official Compilation of Codes,  
Rules and Regulations ("6 NYCRR") of the  
State of New York  
by:

**CONSENT ORDER**

Case Number  
D7-1015-11-04

ROTH STEEL CORPORATION  
Respondent

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is a department of the State of New York which, pursuant to Articles 17, 19, 27, 37 & 71 of the Environmental Conservation Law ("ECL"), is authorized to regulate the water discharges, air emission sources and solid and hazardous waste in the State of New York.
2. Respondent, Roth Steel Corporation ("Respondent"), is an entity authorized to do business in the State of New York, with offices and operations at 800 Hiawatha Boulevard West, City of Syracuse, County of Onondaga, State of New York, (the "Facility").
3. The Department alleges that Respondent has violated the ECL by
  - a. improperly disposing of solid waste and hazardous substances,
  - b. failing to properly control the stormwater runoff from the Facility,
  - c. failing to comply with NYS SPDES requirements,
  - d. failing to comply with the Department's air emissions requirements,
  - e. failing to prevent and remediate petroleum discharges.

4. ECL §71-1929 provides for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation of Titles 1 through 11 inclusive and Title 19 of Article 17 or of the rules or regulations promulgated thereto by the Commissioner of the Department.

5. ECL §71-2103 provides for a penalty of up to fifteen thousand dollars (\$15,000) per day for each violation of Article 19 or of any code, rule or regulations promulgated pursuant thereto by the Commissioner of the Department.

6. ECL §71-2703 provides for civil penalties for violations of Title 3 or 7 of Article 27 of up to \$7,500 for each violation and not more than \$ 1,500 per day for each day that violation continues.

7. In settlement of Respondent's potential civil liability for the aforesaid alleged violation, Respondent has 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 to the provisions of Articles 17 and 71 of the ECL, and has agreed to be bound by the provisions, terms, 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**

A. Respondent is hereby assessed a civil penalty in the amount of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) for the alleged violations stated herein, which shall be paid to the Department as set forth in Subparagraph I (C) below.

B. In the event that the Respondent fails to fully comply with the requirements of the Order in a timely fashion, Respondent shall be subject to penalties of up to \$37,500 per day, without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent. Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

C. Respondent shall pay FIFTY THOUSAND DOLLARS (\$50,000) upon Respondent's signing of this Order and its return to the Department; FIFTY THOUSAND DOLLARS (\$50,000) within 90 days of the effective date of this Order; and FIFTY THOUSAND DOLLARS (\$50,000) within 180 days of the effective date of this Order. Penalty payments to the Department shall be by check made payable to: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th Floor, Albany, N.Y. 12233-5500, Attn: Benjamin A. Conlon.

## **II. COMPLIANCE**

A. Pursuant to the provisions of this Order, Respondent shall conduct the following investigation and/or remediation measures;

1. Solid Waste - Respondent shall, within 90 days of the effective date of this Order, submit to the Department an investigation plan, including a schedule for implementation, which shall be conducted to determine if any contaminants are being released or migrating from the two shredder fluff cells into the waters of the state. Parameters to be sampled in the investigation plan must include, at a minimum, EPA Method 8260; EPA Method 8270; EPA Method 8082; and TAL metals

a. Upon approval of the workplan, Respondent shall implement the approved investigation workplan in accordance with the schedule.

b. Upon completion of the investigation workplan, Respondent shall submit to the Department a report detailing the findings of the investigation and setting forth conclusions as to whether or not Contaminants are being released from the two shredder fluff cells into the waters of the state.

c. If the Report concludes that Contaminants are being released from the two shredder fluff cells into the waters of the state in excess of groundwater standards set forth at 6 NYCRR Section 703.5, Respondent shall remove and properly dispose of all the shredder fluff within either cell (as well as any Contaminants that have been released from the cell) that is causing the release of Contaminants into the waters of the state.

d. If the Report concludes and the Department agrees that neither of the shredder fluff cells is causing the release of Contaminants into the waters of the state in excess of groundwater standards set forth at 6 NYCRR Section 703.5, Respondent shall, pursuant to this Order, close such cell in place, in general accordance with 6 NYCRR Part 360. If the Report concludes that neither of the shredder fluff cells is causing the release of Contaminants into the waters of the state in excess of groundwater standards set forth at 6 NYCRR §703.5 and the Department disagrees with such conclusions, the Department shall set forth the basis of its disagreement in writing and Respondent may invoke Dispute Resolution pursuant to Paragraph III of this Order.

e. Upon determination by the Department in Paragraph II(A)(1)(c) or (d) above regarding its agreement or disagreement with the conclusions of the Report, Respondent, unless it invokes Dispute Resolution, shall within 90 days of receipt of such determination, submit a workplan, including a schedule for implementation, the proposed duration of which shall not extend more than one year, for the Department's approval

(which approval shall not be unreasonably withheld), to either remove the shredder fluff and/or close the cells in general accordance with 6 NYCRR Part 360.

f. Upon approval of the remedial workplan required by II (A)(1)(d) above, Respondent shall implement the approved workplan in accordance with the schedule.

2. Stormwater - Respondent shall, within 90 days of the effective date of this Order, submit to the Department an approvable Stormwater Management Plan, including a schedule of implementation, to properly contain and/or treat the stormwater generated at the Facility. Respondent shall implement the plan unless the Department notifies Respondent in writing that an individual SPDES permit is required.

3. Petroleum contamination - Within 30 days of the effective date of this Order, Respondent shall submit a work plan to investigate any petroleum discharges or any other automobile fluid discharges, at the Facility in accordance with the Department's policies and procedures. Within 45 days of the Department's approval of the workplan, Respondent shall perform the investigation in accordance with the approved work plan and submit a report detailing the findings of the investigation and including a remedial work plan. Within 90 days of the Department's approval of the remedial workplan, Respondent shall remediate any petroleum discharges at the Facility in accordance with the approved work plan and submit a remedial report.

4. Air Compliance

a. By January 15, 2008, Respondent shall install a 4 inch waterline and commence full operation of their new air control equipment at the facility.

b. By February 15, 2008, Respondent shall submit to the Department, for the Department's approval, a proposed test protocol for their air control equipment at the Facility.

c. By March 15, 2008, Respondent shall, in accordance with the Department approved protocol complete the testing and opacity observations for the air pollution control equipment at their facility.

d. If the facility passes the opacity testing, Respondent shall, by April 15, 2008, submit for the Department's approval, an operation and maintenance plan for the operation of the air pollution control equipment at the Facility.

e. If the facility fails the opacity testing, Respondent shall, within 60 days of the failed test, submit an alternative proposed plan, with a schedule for implementation, as well as recommendations for operational limitations to minimize air pollution impacts in the interim period.

5. Best Management Practices Plan - Within 90 days of the effective date of this Order, Respondent shall submit to the Department for approval a Best Management Practices Plan, including a schedule for implementation.

a. Upon approval by the Department of the Best Management Practices Plan, Respondent shall implement such plan in accordance with the schedule for implementation.

B. Investigation and Remediation workplan/report submittals/approvals;

1. All remedial or investigative plans or reports, which Respondent must submit pursuant to this Order, are subject to the Department's approval. Except as otherwise specifically provided, this approval process shall be as follows:

a. The Department shall make a good faith effort to review and respond in writing to each of the submittals Respondent makes pursuant to this Order within sixty (60) days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

b. If the Department disapproves a submittal in whole or in part, it shall specify the reasons for its disapproval. Within thirty (30) days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall either (i) resubmit the submittal to address the Department's comments or, (ii) elect in writing to invoke Dispute Resolution pursuant to Paragraph III. (To the extent Respondent deems it necessary to have additional time to modify its submittal, Respondent may request such additional time along with a justification therefore. The Department's approval of such request by Respondent for additional time shall not unreasonably be withheld.) In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes Dispute Resolution pursuant to Paragraph III of this Order and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

c. Within thirty (30) days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made in connection with such final report, in an electronic format acceptable to the Department. If any document cannot be converted into

electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

### **III. DISPUTE RESOLUTION**

A. If Respondent disagrees with the Department's notice under this Order, Respondent may, within thirty (30) days of its receipt of such notice, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the Department representatives identified in Paragraph IV of this Order. The Department and Respondent shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph III(B). Unless extended by mutual consent of the Department and Respondent, the period for informal negotiations shall not exceed thirty (30) days from the date of the Department's initial response to the Respondent's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period or within such longer period as agreed to by the Department and the Respondent, the Department's position shall be considered binding unless Respondent notifies the Department in writing within thirty (30) days after the conclusion of the thirty (30) day period for informal negotiations, or such longer period as agreed to by the Department and Respondent, that it invokes the Dispute Resolution provisions provided under Subparagraph III(B).

B. 1. Within thirty (30) days of the Department's receipt of notice that Respondent invokes the Dispute Resolution provisions of this Subparagraph III (B), Respondent shall file with the Department's Office of Hearings and Mediation ("OH&M") a request for formal Dispute Resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all



supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the contact people identified in Paragraph IV of this Order.

2. The Department shall serve its Statement of Position no later than thirty (30) days after receipt of Respondent's Statement of Position.

3. Respondent shall have the burden of demonstrating by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via video or telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the Director of the Division of Environmental Remediation (the "Director") and the Respondent. The Director shall issue a final decision in a timely manner. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Respondent notifies the Department within thirty (30) days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) days after receipt of a copy of the Director's final decision. If the Director's decision determines that Respondent failed to meet its burden, Respondent shall be in violation of this Order unless Respondent is successful in an Article 78 appeal of the decision.

5. The invocation of Dispute Resolution shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court orders otherwise. Except as otherwise provided in this Order the invocation of the procedures set forth in this Paragraph III shall constitute an election

of remedies and such election shall constitute an exhaustion and waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph II that shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph III shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622.

#### **IV. NOTICES**

Any notice, request, consent, waiver or other communication required or permitted to be given throughout this Consent Order shall be effective only if in writing and shall be deemed sufficient only if delivered in person or sent by first class mail, e-mail, telecopy, overnight or by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To ROTH STEEL: George Stanton, CEO  
Roth Steel Corporation  
800 Hiawatha Boulevard  
Syracuse, NY 13204

With a copy to: Philip S. Bousquet, Esq.  
Green & Seifter Attorneys, PLLC  
110 West Fayette Street, Suite 900  
Syracuse, NY 13202

To the Department: Department of Environmental Conservation  
Division of Environmental Enforcement  
Attn: Benjamin A. Conlon, Esq.  
625 Broadway, 14th Floor  
Albany, New York 12233-5550

Department of Environmental Conservation  
Division of Environmental Remediation

Attn: Thomas Vigneault, P.E.,  
Regional Enforcement Coordinator,  
615 Erie Blvd. West,  
Syracuse, NY 13204-2400

Or such other people as the Department may designate.

**IV. STANDARD PROVISIONS**

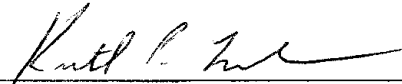
Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document. To the extent the attached standard provisions conflict with the terms of this Order, the terms of this Order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

DATED: Albany, New York

December 28, 2007

New York State Department of  
Environmental Conservation

By: \_\_\_\_\_



CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

Roth Steel Corporation, Respondent

By (Signature): George Stanton  
Print Name: George Stanton  
Title: CEO  
Date: 12/28/07

ACKNOWLEDGMENT

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

On the 28<sup>th</sup> day of December in the year 2007 before me personally came George Stanton to me known, who, being by me duly sworn, did depose and say that s/he resides in Baldwinsville, New York; that s/he is the CEO of Roth Steel Corporation, the corporation described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporation.

Philip S. Bousquet  
Notary Public

PHILIP S. BOUSQUET  
Notary Public in the State of New York  
Qualified in Onondaga County No. 4963947  
Commission Expires March 19, ~~2010~~

Signature and Office of individual taking acknowledgment

## **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, Division of Environmental Enforcement, Attn: Benjamin Conlon, Esq., 625 Broadway, Albany, New York 12233-5550. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

**Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to: NYS Department of Environmental Conservation, Division of Environmental Enforcement, Attn: Benjamin Conlon, Esq., 625 Broadway, Albany, NY 12233-5550.

**Duration.** This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and 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 the 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.

**Other Rights.** 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; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

**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 these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.

32-01-3 (8/90)-10f



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NUMBER  
**526367**

**RECEIPT**

Region Number 7

Date 12/28/07

Location Syracuse

Division Administration

Received of Roth Steel Corp.

In the amount of Fifty thousand dollars & 00/100 \$ 50,000 <sup>00/100</sup>

For Case No. D7-1015-11-04

Cash Department Representative Kenneth Wenhauer

Check Number 108511 Title Admin Asst Trainer

Money Order

**COPY - THIS IS NOT A VALID RECEIPT**