

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Article 27 Title 7 of  
the New York State Environmental Conservation Law and  
of Title 6 of the Official Compilation of Codes, Rules and  
Regulations of the State of New York Part 360, by

**CONSENT  
ORDER**

**CASE NO.  
R7-20121101-89**

Roth Steel Corporation  
City of Syracuse  
Onondaga County, New York

Respondent.

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1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of Title 7 of Article 27 of the New York State Environmental Conservation Law ("ECL") and the regulations promulgated pursuant to that article, including 6 NYCRR Part 360, regarding Solid Waste Management.
2. Roth Steel Corporation is a domestic business corporation with a principal executive office located at 800 W. Hiawatha Boulevard, Syracuse, New York 13204 ("Respondent").
3. Respondent owns and operates a scrap metal recovery facility located at 800 W. Hiawatha Boulevard, Syracuse, New York 13204 (the "Site").
4. The Site contains a large pile of auto shredder residue ("ASR") located adjacent to and surrounding the collection pond (the "ASR Pile"). On March 27, 2012, the Department inspected the Site and ascertained that the ASR Pile has been stored on-Site for a period of greater than eighteen (18) months.
5. ASR is a "solid waste" as defined by ECL Section 27-0701(1).
6. Pursuant to 6 NYCRR Section 360-1.2(b)(164), any accumulation of solid waste for a period in excess of eighteen (18) months constitutes disposal.

7. Pursuant to ECL Section 27-0703 and 6 NYCRR Section 360-1.5(a), no person shall dispose of solid waste except at an exempt facility or at a disposal facility authorized by the Department to accept such solid waste.

8. Pursuant to ECL Sections 27-0703 and 27-0707 and 6 NYCRR Section 360-1.7(a), no person shall construct or operate a solid waste management facility without first applying for and obtaining a permit from the Department.

9. The Site is not an exempt facility and is not a disposal facility authorized by the Department to accept solid waste.

10. Respondent has not applied for or obtained a permit from the Department to construct or operate a solid waste management facility at the Site.

11. Respondent violated 6 NYCRR Section 360-1.5(a) when Respondent disposed of approximately 2,500 tons of ASR, the ASR Pile, at the Site which is not exempt and which is not authorized by the Department to accept such solid waste.

12. Respondent violated ECL Section 27-0707 and 6 NYCRR Section 360-1.7(a) when Respondent operated a solid waste management facility containing approximately 2,500 tons of ASR, the ASR Pile, at the Site without a valid Part 360 permit from the Department.

13. Pursuant to ECL Section 71-2703(l)(a), any person who violates the provisions of or fails to perform any duty imposed by Title 7 of Article 27 of the ECL or any rule or regulation promulgated pursuant thereto shall be liable for a civil penalty of up to Seven Thousand Five Hundred Dollars (\$7,500.00) for each such violation and an additional civil penalty of not more than One Thousand Five Hundred Dollars (\$1,500.00) for each day during which such violation continues.

14. Pursuant to ECL Section 71-2703(l)(b), any person who violates the provisions of or fails to perform any duty imposed by Title 7 of Article 27 of the ECL or any rule or regulation promulgated pursuant thereto and thereby causes the release of solid waste into the environment shall be liable for a civil penalty of up to Eleven Thousand Two Hundred Fifty Dollars (\$11,250.00) for each such violation and an additional civil penalty of not more than Eleven Thousand Two Hundred Fifty Dollars (\$11,250.00) for each day during which such violation continues.

15. The Department alleges that the ASR Pile is solid waste as defined by 6 NYCRR Section 360-1.2(a), which Respondent disputes. By entering into this Consent Order, Respondent does not admit that the ASR Pile is or was solid waste, or that it violated any regulation pertaining to solid waste.

16. In settlement of Respondent's civil liability for the aforesaid violations, Respondent affirmatively waives the right to hearing on this matter as provided by law, consents to the issuing and entering of this Order on Consent, and agrees to be bound by the provisions, terms, and conditions contained herein.

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

**I. COMPLIANCE.** Respondent shall strictly comply with the terms, provisions, and conditions of this Order set forth in the Schedule for Compliance attached to and incorporated into and made a part of this Order as Schedule A. Respondent's failure to comply with any provision of this Order shall constitute a default and a violation of this Order and, upon such

default and violation, the Department's right to pursue all claims and remedies administratively, at law, or in equity shall not be affected by anything contained in this Order.

**II. SUSPENDED CIVIL PENALTY.** Respondent is assessed a Suspended Civil Penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00) payment of which is suspended as a penalty to guarantee compliance. The Suspended Civil Penalty shall become payable in the event the Department makes a final and binding determination that Respondent has failed to comply with the terms of this Order.

The penalty to guarantee compliance under this paragraph shall become due and payable within fifteen (15) calendar days after Respondent receives written notice from the Department that Respondent was or is in violation of this Order.

**III. STIPULATED PENALTIES.** In addition to the Suspended Civil Penalty specified in Paragraph III, above, if Respondent fails to comply with the July 31, 2013 final date for removal and proper disposal of all the ASR as specified in Paragraph 3 of Attachment A, the Schedule for Compliance (the "Final Date"), then Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent has not met the Final Date. All penalties begin to accrue on the first day Respondent is in violation of the Final Date and continue to accrue until all the ASR has been removed and properly disposed. Such sums shall be due and payable within sixty (60) days after receipt of notification from the Department assessing the penalties. If such payment is not received within sixty (60) days after Respondent receives such notification from the Department, interest shall be payable at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check, cashier's check or money order, made payable to New York State Department of Environmental Conservation and shall be delivered

personally or by certified mail, return receipt requested, to the Office of General Counsel, New York State Department of Environmental Conservation, 615 Erie Boulevard West, Syracuse, New York 13204-2400. Payment of the stipulated penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. The payment of stipulated penalties as set forth above shall not limit the Department's right to seek such other relief as may be authorized by law.

Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>PERIOD OF NONCOMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st day through 15th day	\$ 500.00
16th day through 30th day	\$ 1,000.00
31st day and each day thereafter	\$3,000.00

IV. SCHEDULE FOR COMPLIANCE. Respondent shall comply with the terms, provisions, and conditions of the Schedule For Compliance annexed to and made a part of this Order as Schedule A.

V. INSPECTIONS. Respondent shall at all times allow any duly designated employee, consultant, contractor, or agent of the Department or of any other State agency to immediately enter the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspecting and to ensure Respondent's compliance with this Order, with any permit, registration, license, or certificate heretofore or hereafter issued for the Site, and with applicable laws and regulations.

VI. INDEMNIFICATION. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims resulting from the acts or omissions of Respondent resulting from compliance or attempted compliance with the provisions of this Order.

**VII. RESERVATION OF RIGHTS.** The Department hereby reserves all its legal, administrative, and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any summary abatement powers the Commissioner may have pursuant to ECL 71-0301.

**VIII. MODIFICATIONS.** No change in this Order shall be made or become effective except as specifically set forth by a further written order of the Department, being made upon written application to the Department by Respondent setting forth the grounds for the relief sought, or upon the Department's own findings after an opportunity for Respondent to be heard, or pursuant to the summary abatement powers of the Department.

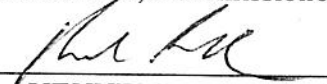
**IX. REGULATORY FEES.** Nothing contained in this Order shall be construed as preventing the Department from collecting regulatory fees, where applicable.

**X. BINDING EFFECT.** The provisions, terms, and conditions of this Order shall bind Respondent, the agents, servants, employees, successors, and assigns of Respondent, and all persons, firms, and corporations acting under or for Respondent.

**XI. EFFECTIVE DATE.** The effective date of this Order shall be the date it is signed by the Commissioner or the Commissioner's designee.

Dated: SYRACUSE, NEW YORK  
January 31, 2013

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
Joe Martens, Commissioner

BY   
KENNETH P. LYNCH  
Regional Director, Region 7

**CONSENT BY RESPONDENT**

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

**Roth Steel Corporation,  
Respondent**

PRINT NAME: George Stanton  
TITLE: CEO  
SIGNATURE: George Stanton  
DATE: 1/29/13

**ACKNOWLEDGMENT**

STATE OF NEW YORK )

COUNTY OF ONONDAGA ) : ss.:

On the 29<sup>TH</sup> day of JANUARY in the year 2013 before me, the undersigned, a Notary Public in aforesaid State, personally appeared GEORGE STANTON, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the corporation upon behalf of which the individual acted, executed the instrument:

  
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NOTARY PUBLIC

**DOUGLAS H. ZAMELIS**  
Notary Public, State of New York  
No. 02ZA6033580  
Qualified in Onondaga County  
My Commission Expires Nov. 22, 2013

**SCHEDULE A**  
**SCHEDULE FOR COMPLIANCE**

1. Within ten (10) days after that portion of the ASR Pile that has already been characterized as non-hazardous has been removed, Respondent shall characterize the remaining portion of the ASR Pile that is adjacent to and surrounds the collection pond at the Site. Respondent shall characterize the remaining portion of the ASR Pile by collecting representative composite samples of the remaining portion of the ASR Pile and analyzing them for PCBs and total lead, and metals using the Toxicity Characterization Leaching Procedure ("TCLP"). The Department's Division of Environmental Remediation's ("DER") guidance document, DER-10, Technical Guidance for Site Investigation and Remediation, must be used to determine the number of composite samples to be collected from the remaining portion of the ASR Pile. A grid of the remaining portion of the ASR Pile shall be established and sample locations must be identified on the grid. Samples must be collected at various depths, i.e. 0-2 feet, 2-4 feet, all the way to the bottom of the remaining portion of the ASR Pile. An Environmental Laboratory Approval Program ("ELAP") certified laboratory must be used to analyze all the samples collected. At least ten (10) days in advance of the sample event, the Department must be notified of the name of the laboratory selected to perform the analysis, the date the samples will be collected from the remaining portion of the ASR Pile, and the turnaround time for the sample analysis.

2. Within forty-five (45) days after the remaining portion of the ASR Pile has been characterized as described in Paragraph 1, above, Respondent shall submit to the Department a report which summarizes the above sampling event and provides a waste characterization determination which indicates whether the remaining portion of the ASR



Pile is hazardous or non-hazardous. The report submitted to the Department must include a laboratory data package and a map showing the sample locations of the remaining portion of the ASR Pile.

3. All ASR shall be removed and properly disposed of by no later than July 31, 2013. If any of the remaining portion of the ASR Pile is characterized as a hazardous waste, Respondent shall remove and properly dispose of all of the hazardous ASR Pile within ten (10) days of the date of the sampling/characterization report described in Paragraph 2, above. Respondent shall handle and process the ASR Pile in accordance with this Order and the October 5, 2012 correspondence from Kendrick Jaglal, P.E., of O'Brien & Gere and Steve Perrigo, P.E., of the Department.

a. The Department must be notified at least forty-eight (48) hours prior to initiating the removal of the non-hazardous portion of the ASR Pile or the hazardous portion of the ASR Pile. The amount (tonnage) of the non-hazardous ASR Pile or the hazardous ASR-Pile sent for disposal must be documented through receipts, invoices, etc., from the disposal facility. Respondent must identify the name of the disposal facility that received the non-hazardous ASR Pile and the hazardous ASR Pile. This documentation shall be submitted to the Department within ten (10) days of shipment.

b. If Respondent chooses to process the non-hazardous ASR Pile to recover any metals prior to its disposal, once the material is moved the material must be staged or stored on a concrete or asphalt pavement surface at all times in a manner that will prevent the migration of any leachate that may be generated by the waste and shall not remain uncovered for a period that exceeds twenty-four (24) hours. Once the non-hazardous

ASR Pile has been processed, it must be stored under cover in a building prior to shipment off-Site for final disposal. Respondent shall document the amount (tonnage) of the non-hazardous ASR Pile sent for disposal through receipts, invoices, etc. from the disposal facility in the same manner as described in Paragraph 3, above.

4. After Respondent has removed the ASR Pile, Respondent shall collect confirmatory samples of the soils beneath the area of the former ASR Pile to confirm that all the ASR and residual contamination are removed. **Confirmatory sampling of the soil shall take place no later than one (1) week from the completion of the removal of the ASR Pile.** These samples shall be collected at the 0-4 inches and 4-16 inches from the surface. These samples shall be analyzed for total PCBs, Lead, and any contaminant that was detected as part of the TCLP testing. An ELAP certified laboratory must be used to analyze all the samples collected. **Within forty-five (45) days after the confirmatory samples of the soils beneath the area of the former ASR Pile have been collected as described in this Paragraph 4, Respondent shall send the Department a report of the results of this confirmatory sampling.**

5. The Department shall determine the need for any subsequent sampling and remediation of the area beneath the former ASR Pile pursuant to Consent Order D7-1015-11-04.

6. **Send all reports, data, receipts, invoices, certificates of disposal, etc., to:**

Steven E. Perrigo, P.E.  
NYSDEC - Region 7  
Division of Solid Materials Management  
615 Erie Boulevard West  
Syracuse, NY 13204