

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged
Noncompliant Waste Tire Stockpile
Located along State Route 32,
Saugerties, New York, and Owned or
Operated,

ORDER

VISTA Index No.
CO3-20051230-23

- by -

VINCENT F. NEGLIA,

Respondent.

Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Vincent F. Neglia to enforce provisions of article 27 of the Environmental Conservation Law ("ECL") and title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") part 360. The proceeding was commenced by service of a motion for order without hearing in lieu of complaint.

In accordance with 6 NYCRR 622.3(a)(3), on January 11, 2006, the motion for order without hearing was mailed to respondent by certified mail, return receipt requested. Respondent received the motion on January 12, 2006, thereby completing service.

The motion for order without hearing, which serves as the complaint in this matter, alleges that since at least September 20, 2005, more than 1,000 waste tires are located at a facility located along State Route 32, Town of Saugerties, New York (the "site"), and owned by respondent. The motion further alleges that because of the waste tires disposed at the site, the facility is a waste tire storage facility. Department staff alleges that respondent:

(1) violated 6 NYCRR 360-1.7(a)(1) and 360-13.1(b) by owning or operating a waste tire storage facility without a permit;

(2) violated 6 NYCRR 360-13.3(a) by owning or operating a waste tire storage facility without a Department approved site plan, monitoring and inspection plan, closure plan, contingency plan, storage plan, vector

control plan, and operation and maintenance manual;

(3) violated 6 NYCRR 360-13.3(e)(2) by failing to prepare and file quarterly operation reports with the Department; and

(4) violated 6 NYCRR 360-13.3(e)(3) by failing to prepare and file annual reports with the Department.

As a consequence of the violations alleged, Department staff seeks a determination that respondent owns or operates a "noncompliant waste tire stockpile," as that term is defined by ECL 27-1901(6). Accordingly, staff seeks a civil penalty and other remedial action.

Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the motion has expired, and has not been extended by Department Staff. Accordingly, staff's motion for an order without hearing is unopposed. Although respondent was in default as of February 1, 2006, Department staff does not seek a default judgment. Instead, staff seeks a determination on the merits of its motion for an order without hearing.

Department Staff filed its motion for an order without hearing with the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") P. Nicholas Garlick, who prepared the attached report. I adopt the ALJ's report as my decision in this matter, subject to my comments below.

Where Department staff's motion for an order without hearing is unopposed, the motion may be granted when staff supports each element of the alleged claims with evidence in admissible form. I concur with the ALJ that in this matter, the affidavits of Department staff's witnesses and other documentary evidence supporting staff's motion establish respondent's liability for all the claims asserted, except for the annual reporting requirement.

Based upon the evidence submitted on this motion, the earliest date it may be determined that more than 1,000 waste tires were disposed at the site is September 20, 2005. The date of staff's motion is January 11, 2006, and the Department staff affidavits in support of the motion are dated January 3, 2006. Pursuant to 6 NYCRR 360-13.3(e)(3), respondent is required to file an annual report no later than 60 days after the first day of January following each year or portion thereof of operation. Respondent would have had until March 2, 2006 to file the annual

report. Thus, the violation of 6 NYCRR 360-13.3(e)(3) for the failure to prepare and file the annual report with the Department cannot be determined on this motion. All the other violations alleged in the motion, however, are supported by sufficient evidence. Accordingly, the motion may be granted in part.

Based upon the record, I also conclude that the proposed civil penalty and the measures recommended to address the violations are appropriate. Even without the violation of 6 NYCRR 360-13.3(e)(3), the remaining violations support the \$10,000 penalty (see ECL 71-2703[1]). Moreover, because respondent's facility is a "noncompliant waste tire stockpile" as that term is defined in ECL 27-1901(6), Department staff's determination to undertake abatement measures directly is authorized by statute (see ECL 27-1907[2], [6]), as is the requirement that respondent fully cooperate with staff's abatement activities (see 6 ECL 27-1907[2]).

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. Pursuant to 6 NYCRR 622.12, Department staff's motion for an order without hearing is granted in part, and otherwise denied.

II. The site is determined to constitute a waste tire storage facility subject to the provisions of 6 NYCRR subpart 360-13 because more than 1,000 waste tires have been stored at the site since at least September 20, 2005. The site constitutes a "solid waste management facility" as that term is defined by 6 NYCRR 360-1.2(b)(158), because it is a waste tire storage facility.

III. Respondent Vincent F. Neglia is determined to have committed the following violations during the period from at least September 20, 2005, until January 11, 2006, the date of staff's motion:

1. Respondent has owned or operated the solid waste management facility at the site without a valid permit in continuing violation of 6 NYCRR 360-1.7(a)(1) and 360-13.1(b);

2. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved site plan, as required by 6 NYCRR 360-13.2(b);

3. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved monitoring and inspection plan, as required by 6 NYCRR 360-13.2(e);

4. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved closure plan, as required by 6 NYCRR 360-13.2(f);

5. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved contingency plan, as required by 6 NYCRR 360-13.2(h);

6. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved storage plan, as required by 6 NYCRR 360-13.2(i);

7. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved vector control plan, as required by 6 NYCRR 360-13.2(j); and

8. Respondent violated 6 NYCRR 360-13.3(a) because he operated a waste tire storage facility without a Department approved operation and maintenance manual; and

9. Respondent violated 6 NYCRR 360-13.3(e)(2) by failing to file a quarterly operation report with the Department.

IV. As a result of the above violations, respondent is determined to be the owner and operator of a noncompliant waste tire stockpile as that term is defined by ECL 27-1901(6).

V. For the violations determined herein, it is hereby ordered that:

1. Respondent shall immediately stop allowing any waste tires to come onto the site in any manner or method, or for any purpose, including but not limited to nor exemplified by, acceptance, sufferance, authorization, deposit, or storage. For purposes of this paragraph, "waste tires" includes, but is not limited to, tires of any size (including passenger,

truck, and off-road vehicle tires), whether whole or in portions (including halved, quartered, cut sidewalls, cut tread lengths, tire shreds, and tire chips) and whether or not on tire rims; and

2. Respondent shall fully cooperate with the State and refrain from any activities that interfere with the State, its employees, contractors, or agents in the event the State abates the noncompliant waste tire stockpile at the site.

VI. Respondent Vincent F. Neglia is hereby assessed a civil penalty in the amount of TEN THOUSAND DOLLARS (\$10,000). The civil penalty shall be due and payable within thirty (30) days after service of this order upon respondent. Payment shall be made in the form of a cashier's check, certified check or money order payable to the order of the "New York State Department of Environmental Conservation" and mailed to the Department at the following address:

New York State Department of Environmental Conservation
625 Broadway, 14th floor
Albany, New York 12233-5500
ATTN: Charles E. Sullivan, Jr., Esq.
RE: VISTA Index No. CO3-20051230-23.

VII. The assessment of the civil penalty provided for in this order shall not impair, limit or abridge the right of the Department or the State of New York to recover from respondent or any of its principals the cost of any abatement at the site.

VIII. All communications from respondent to the Department concerning this order shall be made to Charles E. Sullivan, Jr., Esq., at the following address:

New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500
ATTN: Charles E. Sullivan, Jr., Esq.
Re: VISTA Index No. CO3-20051230-23.

IX. The provisions, terms and conditions of this order shall bind respondent Vincent F. Neglia, and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By:

Denise M. Sheehan
Commissioner

Dated: November 3, 2006
Albany, New York

TO: Mr. Vincent F. Neglia (VIA CERTIFIED MAIL)
3687 State Route 32
Saugerties, New York 12477

Charles E. Sullivan, Jr., Esq. (VIA REGULAR MAIL)
New York State Department of
Environmental Conservation
625 Broadway, 14th floor
Albany, New York 12233-5500

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of -

the Alleged Noncompliant Waste Tire Stockpile Located
along State Route 32, Saugerties, New York, Owned or
Operated

by:

VINCENT F. NEGLIA

Respondent.

VISTA Index No. CO3-20051230-23

REPORT ON MOTION FOR ORDER WITHOUT HEARING

/s/

P. Nicholas Garlick
Administrative Law Judge

SUMMARY

This report recommends that the Commissioner issue an order in this matter involving a noncompliant waste tire stock pile: (1) finding the respondent liable for nine of the ten violations alleged by the Staff of the Department of Environmental Conservation (DEC Staff); (2) imposing a \$10,000 civil penalty; (3) directing the respondent to cease accepting additional waste tires; and, (4) directing the respondent to cooperate with the State in the cleanup at the site.

PROCEEDINGS

By papers dated January 11, 2006, DEC Staff initiated this administrative enforcement proceeding against Vincent F. Neglia, the respondent.

On January 12, 2006, the respondent was served via certified mail with a Notice of Motion for Order Without Hearing, a Motion for Order Without Hearing, an Attorney Brief in Support for Motion for Order Without Hearing, the affidavit of DEC Staff member Joseph Battista, the affidavit of DEC Staff member Kevin Gilmartin and a copy of the deed for the property where the alleged violation occurred indicating the respondent is the owner of the subject property.

No answer has been received from the respondent, though the deadline for such answer was February 1, 2006.

This matter was assigned to Administrative Law Judge (ALJ) P. Nicholas Garlick on February 16, 2006.

FINDINGS OF FACT

1. Respondent Vincent F. Neglia is the owner of a parcel of real property (site) located along State Route 32, in the Town of Saugerties, New York (Ulster County Tax Map identification number 8.2-6-18).
2. The site is a solid waste management facility having more than 1,000 waste tires.
3. Respondent has never applied for or received a solid waste management facility permit to operate

the waste tire storage facility on the site.

4. Respondent has failed to provide DEC Staff a site plan that specifies the waste tire facility's boundaries, utilities, topography and structures.
5. Respondent has failed to provide DEC Staff with a monitoring and inspection plan which addresses such matters as readiness of fire-fighting equipment and the integrity of the security system.
6. Respondent has failed to provide DEC Staff a closure plan that identifies the steps necessary to close the facility.
7. Respondent has failed to provide DEC Staff a contingency plan.
8. Respondent has failed to provide DEC Staff a storage plan that addresses the receipt and handling of all waste tires and solid waste to and from the site.
9. Respondent has failed to provide DEC Staff a vector control plan that provides that all waste tires be maintained in a manner which limits mosquito breeding potential and other vectors.
10. Respondent has failed to receive approval from DEC Staff for an operation and maintenance manual covering the site's activities.
11. Respondent has failed to prepare and file at least one quarterly operation report with DEC Staff.
12. Respondent owns and operates a noncompliant waste tire stockpile, as that term is defined in ECL 27-1901.6, since at least September 20, 2005.

DISCUSSION

In its motion for order without hearing, DEC Staff alleges that the respondent committed ten violations.

First Alleged Violation

DEC Staff alleges the respondent never applied for

or received a solid waste management facility permit to operate the waste tire storage facility on the site in violation of 6 NYCRR 360-1.7(a)(1) and 360-13.1(b).

DEC Staff has provided a copy of the deed for the site which shows that respondent owns the site. In his affidavit (dated January 3, 2006), DEC Staff member Battista estimates that there are at least 3,500 waste tires on the site and states that these waste tires have been at the site since at least September 20, 2005. Mr. Battista further states that he has made a diligent search of DEC's files and found no record of a solid waste management permit to operate a waste tire storage facility issued to the respondent or an application therefor.

DEC Staff has shown that respondent stored more than 1,000 waste tires at the site without obtaining a permit in violation of 6 NYCRR 360-13.1(b) and respondent operated a solid waste management facility without a valid permit in violation of 6 NYCRR 360-1.7(a)(1).

Second Alleged Violation

DEC Staff alleges the respondent operated the facility without a department approved site plan that specifies the waste tire facility's boundaries, utilities, topography and structures in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of a site plan for this site.

DEC Staff has shown that respondent failed to operate the facility in accordance with a department approved site plan in violation of 6 NYCRR 360-13.3(a).

Third Alleged Violation

DEC Staff alleges the respondent operated the facility without a department approved monitoring and inspection plan which addresses such matters as readiness of fire-fighting equipment and the integrity of the security system in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of a monitoring and inspection plan for this site.

DEC Staff has shown that respondent failed to operate the facility without a department approved monitoring and inspection plan in violation of 6 NYCRR 360-13.3(a).

Fourth Alleged Violation

DEC Staff alleges respondent failed to operate the facility in accordance with a department approved closure plan identifying the steps necessary to close the facility in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of a closure plan for this site.

DEC Staff has shown that respondent failed to operate the facility in accordance with a department approved closure plan in violation of 6 NYCRR 360-13.3(a).

Fifth Alleged Violation

DEC Staff alleges respondent failed to operate the facility in accordance with a department approved contingency plan in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of a contingency plan for this site.

DEC Staff has shown that respondent failed to operate the facility in accordance with a department approved contingency plan in violation of 6 NYCRR 360-13.3(a).

Sixth Alleged Violation

DEC Staff alleges respondent failed to operate the facility in accordance with a department approved storage plan that addresses the receipt and handling of all waste tires and solid waste to and from the site in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of a storage plan for this site.

DEC Staff has shown that respondent failed to operate the facility in accordance with a department approved storage plan in violation of 6 NYCRR 360-13.3(a).

Seventh Alleged Violation

DEC Staff alleges respondent failed to operate the facility in accordance with a department approved vector control plan that provides that all waste tires be maintained in a manner which limits mosquito breeding potential and other vectors in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of a vector control plan for this site.

DEC Staff has shown that respondent failed to operate the facility in accordance with a department approved vector control plan in violation of 6 NYCRR 360-13.3(a).

Eighth Alleged Violation

DEC Staff alleges respondent has failed to operate the facility in accordance with a department approved operation and maintenance manual covering the site's activities in violation of 6 NYCRR 360-13.3(a).

In his affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of an operation and maintenance manual for this site or a record of DEC approval of such a manual.

DEC Staff has shown that respondent failed to operate the facility in accordance with a department approved operation and maintenance manual in violation of 6 NYCRR 360-13.3(a).

Ninth Alleged Violation

DEC Staff alleges respondent failed to prepare and file quarterly operation reports with DEC Staff in violation of 360-13.3(e)(2).

The tire pile in question was first brought to the attention of DEC Staff following a New York State Police flight over the site as part of their marihuana eradication

program on September 20, 2005. This is the earliest date that DEC Staff has shown the tire pile existed. Quarterly operation reports are due within 15 days of the end of each quarter (6 NYCRR 360-13.3(e)(2)). Since the third quarter of 2005 ended on September 30, 2005, the quarterly report was due by October 15, 2005. In his January 3, 2006 affidavit, DEC Staff member Battista states he made a diligent search of DEC's records and found no record of quarterly operation reports submitted by respondent.

DEC Staff has shown that respondent failed to submit quarterly operation reports in violation of 6 NYCRR 360-13.3(e)(2).

Tenth Alleged Violation

DEC Staff alleges respondent failed to prepare and file annual reports with DEC Staff in violation of 360-13.3(e)(3).

DEC Staff has failed to show that respondent failed to submit annual reports in violation of 6 NYCRR 360-13.3(e)(3). As stated above, the first indication of the existence of the tire pile noted in DEC Staff's papers show discovery of the pile in September 2005. 6 NYCRR 360-13.3(e)(3) requires the filing of an annual report no later than sixty days after the first day of January of the following year, which means the respondent had until March 2, 2006 to file such report.

The evidence supplied by DEC Staff is the affidavit of DEC Staff member Battista in which he states made a diligent search of DEC's records and found no record of annual reports submitted by respondent. However, this affidavit is dated January 3, 2006. DEC Staff does not present proof that the annual report was not supplied after this date and before it was due on March 2, 2006. Accordingly, DEC Staff has failed to show that respondent failed to submit annual reports in violation of 6 NYCRR 360-13.3(e)(3).

Civil Penalty

DEC Staff seeks a civil penalty of \$10,000 for the ten violations. DEC Staff does not seek to assign a monetary value for each of the violations, but rather treats the violations together. DEC Staff argues that respondent is in the business of managing waste tires and has obtained

an economic benefit from failing to comply with relevant solid waste management and permitting regulations. In addition, noncompliant waste tire stockpiles, such as this one, pose a significant potential harm to the environment by constituting a serious fire threat and public nuisance. DEC Staff also notes that respondent made no effort to comply with the relevant regulations and that these violations were not procedural in nature. According to DEC Staff, this is the first administrative proceeding brought by DEC Staff against the respondent.

DEC Staff's suggested penalty of \$10,000 is far less than the statutory maximum for these violations which is in excess of \$2 million. It is also consistent with penalties assessed in similar cases. Notwithstanding that one of the alleged violations was not established, the severity of the remaining violations does not warrant any reduction in the suggested penalty. Accordingly, the Commissioner should impose a \$10,000 civil penalty in this case.

Other Relief

In addition to the \$10,000 civil penalty, DEC Staff seeks the Commissioner to direct the respondent to immediately stop accepting additional waste tires at the site. DEC Staff states that this language is necessary to reduce the ultimate cost of remediating the site, a cost which may be borne by the State should it have to remove the waste tires and properly dispose of them. In the circumstances, DEC Staff's request should be granted.

DEC Staff also seeks language in the Commissioner's order requiring the respondent to fully cooperate with the State as it abates the tire piles on the site. DEC Staff explains that it is not seeking as part of its relief an order directing the respondent to remove and properly dispose of the waste tires, but rather undertake these actions pursuant to ECL 27-1907.6. In the circumstances, DEC Staff's request should be granted.

CONCLUSIONS OF LAW

DEC Staff has established that the following violations were committed.

1. Respondent never applied for or received a solid waste management facility permit to operate the

waste tire storage facility on the site in violation of 6 NYCRR 360-1.7(a)(1) and 360-13.1(b).

2. Respondent failed to operate the facility in accordance with a department approved site plan that specifies the waste tire facility's boundaries, utilities, topography and structures in violation of 6 NYCRR 360-13.3(a).
3. Respondent failed to operate the facility in accordance with a department approved monitoring and inspection plan which addresses such matters as readiness of fire-fighting equipment and the integrity of the security system in violation of 6 NYCRR 360-13.3(a).
4. Respondent failed to operate the facility in accordance with a department approved closure plan that identifies the steps necessary to close the facility in violation of 6 NYCRR 360-13.3(a).
5. Respondent failed to operate the facility in accordance with a department approved contingency plan in violation of 6 NYCRR 360-13.3(a).
6. Respondent failed to operate the facility in accordance with a department approved storage plan that addresses the receipt and handling of all waste tires and solid waste to and from the site in violation of 6 NYCRR 360-13.3(a).
7. Respondent failed to operate the facility in accordance with a department approved vector control plan that provides that all waste tires be maintained in a manner which limits mosquito breeding potential and other vectors in violation of 6 NYCRR 360-13.3(a).
8. Respondent has failed to operate the facility in accordance with a department approved operation and maintenance manual covering the site's activities in violation of 6 NYCRR 360-13.3(a).
9. Respondent failed to prepare and file quarterly operation reports with DEC Staff in violation of 360-13.3(e)(2).

RECOMMENDATIONS

I recommend that the Commissioner issue an order consistent with my conclusions herein that would:

- I. Find the respondent liable for the nine violations proven and described above;
- II. Impose a civil penalty of \$10,000;
- III. Direct the respondent to immediately stop accepting waste tires at the site in any manner or method or for any purpose, including but not limited to nor exemplified by, acceptance, sufferance, authorization, deposit, or storage. Waste tires includes, but is not limited to, tires of any size (including passenger, truck, and off-road vehicle tires), whether whole or in portions (including halved, quartered, cut sidewalls, cut tread lengths, tire shreds, tire chips) and whether or not on tire rims;
- IV. Direct the respondent to fully cooperate with the State and refrain from any activities that interfere with the State, its employees, contractors, or agents in the event the State abates the noncompliant waste tire stockpile at the site; and
- V. Undertake such other and further actions as may be determined appropriate.

To: Charles E. Sullivan, Jr., Esq.
Director
NYSDEC Division of Environmental Enforcement
625 Broadway
Albany, NY 12233-5500

Mr. Vincent F. Neglia
3687 State Route 32
Saugerties, NY 122477