

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0000 6900 2840

April 8, 2016

Lester A. Sittler
Fly Creek Station – Cemetery Road
P.O. Box 235
Fly Creek, NY 13337

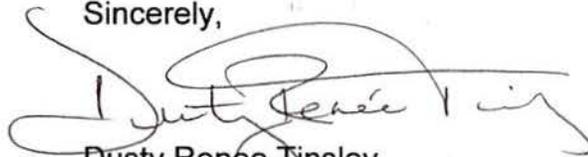
Re: Order on Consent
Jason Bancroft
R4-2015-0708-80

Dear Mr. Sittler:

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,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

cc: J. McCullough

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17
And 6 NYCRR Part 750

ORDER ON CONSENT
File No. R4-2015-0708-80
Permit No. NYR00F585

-by-

Jason Bancroft
2647 Otsego County Route 16
Burlington Flats, NY 13315.

WHEREAS:

1. The Department of Environmental Conservation (“Department” or “DEC”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereto, including Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”). The United States Environmental Protection Agency (“EPA”) has approved the New York State Pollution Discharge Elimination System (“SPDES”) to implement the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit program that includes the regulation of stormwater discharges from the disturbance on one acre of land or more.
2. Respondent, Jason Bancroft, is the owner and/or operator of Bancroft Scrap Metal, located on property at 2647 Otsego County Highway 16 in the Town of Burlington, Otsego County (“Facility”). The business consists of operating a lumber sawmill, metal recycling, and automobile dismantling and recycling on a ten acre lot (“Property”). The Property includes approximately 5.8 acres of watershed area with stormwater draining from the Property to an unnamed tributary which eventually flows into Butternut Creek. Butternut Creek eventually discharges into a portion of a New York State regulated wetland area (HW-19).
3. EPA’s regulations for the permitting of stormwater discharges are found at 40 CFR 122.26.
4. Pursuant to Section 402 of the Clean Water Act (“CWA”), stormwater discharges from certain construction activities are unlawful unless they are authorized by a NPDES permit or by a state permit program.

5. The SPDES program is a NPDES-approved program with permits issued in accordance with the ECL.
6. 6 NYCRR Part 750-1.4(b) states that “For discharges of stormwater that are not to groundwater, permits shall be required in accordance with 40 CFR 122.26 except as provided in Section 1069 of the federal intermodal transportation efficiency Act of 1991.”
7. Respondent discharged stormwater associated with its industrial activity on the Site.
8. Respondent submitted to the Department a Stormwater Pollution Prevention Plan (“SWPPP”) and a Notice of Intent (“NOI”) for coverage under the SPDES Multi Sector General Permit for Stormwater Associated with Industrial Activities Permit (GP-0-12-1-001) (“MSGP” or “Permit”) dated October 2014.
9. The Permit states that “A discharger of stormwater associated with industrial activity may be authorized under this permit only if the owner or operator has developed and implemented a [“SWPPP”] according to the requirements in Parts III, IV, and applicable sections of Parts VIII and IX of this permit.” Part I.E.2.
10. Department staff conducted an inspection of the Facility on July 3, 2015. At this time, it was determined that Respondent failed to develop and implement a SWPPP according to the requirements in Parts III, IV, and applicable sections of Parts VIII and IX of this permit.
11. As Respondent failed to develop and implement a SWPPP according to the requirements in Parts III, IV, and applicable sections of Parts VIII and IX of this permit, coverage for Respondent under the Permit never became effective.
12. The Respondent’s failure obtain a permit for discharges of stormwater from industrial activities at the Site is a violation of 6 NYCRR Part 750-1.4(b).
13. Department staff sent Respondent a Notice of Violation dated September 28, 2015 setting forth deficiencies in the SWPPP.

Civil Penalty

14. ECL Section 71-1929 states that “Any person who violates any provision of Article 17 shall be liable for a penalty of up to thirty seven thousand five hundred dollars (\$37,500) per day for each violation.”

Waiver of Hearing

15. Respondent has affirmatively waived his right to a hearing as provided by law and has consented to the issuance of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

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

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) of which FIVE HUNDRED DOLLARS (\$500) shall be payable to the New York State Department of Environmental Conservation by money order or certified check at the time this Order is returned to the Department signed and notarized. TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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

II. Respondent shall comply with the attached Schedule of Compliance which is incorporated into the Order and is enforceable thereunder.

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

IV. This Order is binding upon the Respondent and shall inure to its benefit and that of its successors and assigns. Respondent is responsible for ensuring that its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto comply with terms and conditions thereof.

V. All communications except where otherwise specifically directed should be sent as follows:

To the Department at:

Jeffrey McCullough
New York State
Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

Please include the name and address of the facility as well as the permit number for the facility.

And to the Respondent at:

Jason Bancroft
Bancroft Scrap Metal
2647 Otsego County Route 16
Burlington Flats, NY 13315

VI. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Order because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provided, however, that the Respondent notifies the Department in writing within 5 days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

VII. 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.

VIII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question without prior notice in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order, and the ECL and regulations promulgated thereunder.

IX. 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, its directors, officers, employees, servants, agents, successors or assigns.

X. 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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.

XI. Review of Submitted Documents

A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. (1) If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. The effective date of this Order shall be the date the Order is signed by the Department.

XIII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

XVI. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department, State, or Respondent.

XVII. This Order settles all violations set forth in the December 14, 2015 Amended Complaint upon payment of the civil penalty and compliance with the Schedule of Compliance. The Amended Notice of Hearing and Amended Complaint in this matter shall be withdrawn as of the effective date of this Order.

DATED: April 8, 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State
Department of Conservation

BY: 
Keith Goertz
Regional Director
Region 4

Schedule of Compliance

1. Within 60 days from the effective date of this Order, Respondent must submit to Department staff for review a modified SWPPP which addresses deficiencies set forth in the September 28, 2015 Notice of Violation sent to Respondent by Department staff.
2. Within 120 days of the effective date of this Order, the modified SWPPP must be fully implemented.
3. Within 120 days of the effective date of this Order, Respondent shall submit to Department staff the attached Certification of Compliance, completed and signed.