


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
7016 0340 0000 4616 5256

January 9, 2017

Greg Gaskell
Bellevue Builders Supply
500 Duanesburg Road
Schenectady, NY 12306

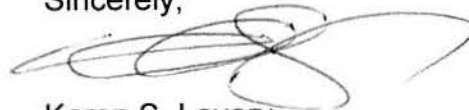
Re: Order on Consent
R4-2016-0527-103


Dear Mr. Gaskell:

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: B. Potter
J. Hogan



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of
Violations of Article 19
of the Environmental
Conservation Law of the
the State of New York by:

-by-

Order on Consent
File No. R4-2016-0527-103

Bellevue Builders Supply
500 Duanesburg Road
Schenectady, NY 12306

Respondent

WHEREAS:

JURISDICTION

1. Pursuant to Environmental Conservation Law ("ECL") Article 19, the Department of Environmental Conservation ("Department" or "DEC") is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the ECL.
2. Pursuant to ECL Article 19, the New York State Department of Environmental Conservation has administrative jurisdiction to safeguard the air resources of the state from pollution.

RESPONDENT

3. Respondent, Bellevue Builders Supply, is a commercial and residential supplier of building supply products with a location at 500 Duanesburg Road, Schenectady, New York ("site")
4. Respondent is a "person" as defined at 6 NYCRR 200.1(bi).
5. On March 9, 2016, March 21, 2016, and May 16, 2016, Department staff inspected the site and witnessed dust blowing from Respondent's transfer lot to the surrounding neighborhood including several homes in the vicinity. Upon further inspection, Department staff determined that traffic moving around any section of the lot caused dust to be picked up and sent off site. Dust from the lot could be observed all the way to Taylor Street, a number of blocks away.

6. During a prior inspection on March 21, 2015, Respondent was issued a Warning Notice for the same issue. The Warning Notice was hand delivered to a member of Respondent's staff and the notice provided that if the problem continued Respondent would be liable for a civil penalty of up to \$18,000, plus an additional penalty not to exceed \$15,000 for each day that the violation continues.

VIOLATIONS

7. Regulations at 6 NYCRR §211.1 provide that "*No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.*"

8. Respondent violated regulations at 6 NYCRR §211.1 by failing to prevent the fugitive dust generated in Respondent's lot from leaving the site and impacting nearby neighborhoods.

CIVIL PENALTY

9. Section 71-2103 generally provides for a civil penalty of not less than \$375 and not more than \$18,000 for each violation of Article 19 or any code, rule or regulation which was promulgated thereto.

WAIVER OF HEARING

10. Respondent hereby affirmatively waives its right to a hearing in the manner provided by law, consent to the issuance and entry of this Order and agree to be bound by the terms, provisions, and conditions contained herein.

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

I. With respect to the aforesaid alleged violation, a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000) is hereby assessed against the Respondent of which FIVE THOUSAND DOLLARS (\$5,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance FIFTEEN THOUSAND DOLLARS (\$15,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

In the event that Respondent fails to comply with the requirements of this Order, and fugitive dust continues to leave the site, regardless of the time of year, 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 the Respondent.

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

III. This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. All communications to the Department except where otherwise specifically directed should be sent to:

New York State Department
of Environmental Conservation
Region 4 - Air Division Attn: RAPCE
1130 North Westcott Road
Schenectady, New York 12306
518-357-2350

V. 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.

VI. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect as may be deemed necessary to determine the status of Respondent's compliance herewith.

VII. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VIII. Respondent shall indemnify and hold the Department, the State of New York, and its 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 - employees, servants, agents, successors or assigns.

IX. 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 may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

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

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

D. 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 he 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.

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

DATED: *January, 9* 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Bellevue Builders Supply

SIGNED: [Signature]

DATE: 12/22/16

STATE OF New York

COUNTY OF Schenectady ss.:

On the 22nd day of December in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Greg Groshell 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 acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public
Qualified in the County of: 2/19/20
My Commission Expires: 2/19/20

LISA M. YOWELL
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN MONTGOMERY & SCHENECTADY COUNTY
REG. NO. 01Y06182161
COMM. EXP. FEBRUARY 19, 2012 2020

SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Respondent shall submit to the Department, a revised Fugitive Dust Control Plan to prevent further Part 211 violations. Compliance with the plan shall not be a defense to other Part 211 and other regulatory violations.
2. Upon submission and Department approval of the Fugitive Dust Control Plan, this Order on Consent is terminated.
3. Effective immediately, Respondent shall begin implementation of the approved Fugitive Dust Control Plan upon receiving written notice of the Department's approval of the plan.