

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Article 27 of the
Environmental Conservation Law

ORDER ON CONSENT

File No. R4-2008-0710-107

- by -

Capital District Concrete Batching Co., Inc.
1250 Riverfront Center
Amsterdam, New York 12010

Respondent

WHEREAS:

1. The Department of Environmental Conservation (“Department”) is empowered to regulate the operation of solid waste management facilities pursuant to Article 27 of the Environmental Conservation Law “ECL”.
2. The Respondent, Cranesville Block Co. , Inc. , owns and operates a cement batch plant on Commerce Avenue, Albany, New York (“facility”).
3. Respondent’s cement trucks are cleaned out at the site and the remainder of a truck’s load is discharged to the ground.
4. The discharged cement is a commercial solid waste as defined at 6 NYCRR 360-1.2(b)(30) . A commercial waste is included within the definition of a solid waste pursuant to 6 NYCRR 360-1.2(a)(1).

Illegal Operation of Solid Waste Management Facility

5. On June 13, 2008, Department staff inspected the site and observed Respondent’s truck dumping the remainder of its cement load composed of water, aggregate and calcined cement at the site. The material flowed across the site nor holding any form typical of concrete.
6. Department staff observed that a large area of the facility is covered with this commercial waste made up of the concrete residue from Respondent’s trucks (“site”).
7. Respondent has created an undetermined size solid waste management facility at the site as that term is defined at 6 NYCRR 360-1.2(b) (158) by the dumping over the years of the concrete residue from trucks.

8. Regulations at 6 NYCRR part 360-1.7(a)(1)(ii) prohibit the operation of a solid waste management facility except pursuant to a permit.

9. The Respondent has never been issued a solid waste management facility permit pursuant to 6 NYCRR Part 360 for the site. Respondent's operation of the site as a solid waste management facility for commercial waste is a continuing violation of 6 NYCRR Part 360-1.7(a)(1)(ii).

Illegal Disposal of a Solid waste

10. Section 360-1.5(a)(1) and (2) prohibits the disposal of solid waste except at an authorized or exempt facility.

11. Respondent's disposal of commercial waste from its trucks at the site is a violation of 6 NYCRR 360-1.5(a).

Civil Penalties

12. ECL Section 71-2703(1) generally provides for a maximum civil penalty of \$7,500 for the initial day of violation of Article 27 and regulations, permits and orders issued thereunder and a maximum of \$1,500 per day for each day thereafter...and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

Waiver of Hearing

13. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000) is assessed against the Respondent for the above violations. TWENTY THOUSAND DOLLARS (\$20,000) of the civil penalty is suspended conditioned on Respondent's compliance with the terms, conditions and provisions of this Order on Consent. FIVE THOUSAND DOLLARS (\$5,000) of the penalty is due with the return of the signed and notarized Order. The penalty shall be paid by certified check made payable to the DEC and returned with the signed and notarized Order. The suspended penalty shall be due within fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets out the violations of the Order

II. Respondent shall comply with the attached Schedule of Compliance. The Schedule of Compliance is incorporated and made part of the provisions, terms, and conditions of this Order.

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, its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. All communications except where otherwise specifically directed to the Department shall be sent to:

Regional Solid Waste Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

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 in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

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

XI. Department staff shall withdraw its Motion for Order Without Hearing in the above captioned served on Respondent as soon as possible after the effective date of this Order.

DATED: _____, 2008
Rotterdam, NY

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY: _____
Eugene J. Kelly, Jr.
REGIONAL DIRECTOR
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 2008, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____,
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order and thereafter, Respondent shall cease the disposal of cement residues from its cement trucks or any other solid waste at the site.
2. Within 90 days of the effective date of this Order, Respondent shall remove all cement residue and byproducts disposed off at the site, and remove the solid waste for recycling or disposal in accordance with applicable 6 NYCRR Part 360 regulations, and furnish the Department with copies of receipts verifying legal disposal or recycling of the solid waste. Respondent shall take whatever actions are necessary during the removal to prevent any turbid discharges from the site or the creation of fugitive dust.
3. Within 10 days of completing the removal of the cement residue from the site, Respondent shall place necessary topsoil medium to grow a grass cover, and seed and mulch the site.
4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a plan to be implemented at the site for handling, and disposal and/or recycling of cement residues remaining in its trucks upon return to the facility.