

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED

7015 0640 0005 8292 2281

June 23, 2017

Brian S. Kremer
Corporation Counsel
City Hall
97 Mohawk Street
Cohoes, NY 12047-2897

Re: Order on Consent
R4-2017-0510-208
City of Cohoes

Dear Mr. Kremer:

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

This will also acknowledge receipt of \$3,000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery/ JV

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: V. Schmitt
B. Maglienti
J. Weidman
J. Whitcomb



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law ("ECL"),
Article 27

Order on Consent
File No. R4-2017-0510-208

-by-

City of Cohoes
97 Mohawk Street
Cohoes, NY 12047

Respondent

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, *inter alia*, ECL 3-0301. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities pursuant to Article 27 of the New York State Environmental Conservation Law (ECL).
2. Pursuant to authority granted to the Department under ECL Article 27, rules respecting the permitting, registration and operation of solid waste management facilities were promulgated at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"), Part 360 *et seq.*
3. Respondent, City of Cohoes, is a municipality of the State of New York.

Facts

4. The City of Cohoes ("City") owns a vacant site located on Division Street in Cohoes, New York ("site"). The site is being used by the city and possibly other people, for disposal of yard waste, construction and demolition debris ("C&D"), and land clearing debris.
5. Department staff inspected the site on December 2, 2016, February 2, 2017, March 3, 2017, March 7, 2017 and April 10, 2017.
6. On December 2, 2016, Department staff observed at the site, prohibited disposal of solid waste.

7. During site visits conducted on February 2, 2017 and March 3, 2017, Department staff observed continued disposal of solid waste.
8. On March 7, 2017, Department staff met with a City representative at the site, who indicated that the site would be cleaned up and acceptance of waste would cease.
9. On April 10, 2017, Department staff once again inspected the site and determined that disposal of solid waste was continuing to occur.
10. Respondent did not have authorization to dispose of solid waste.
11. Regulations at 6 NYCRR 360-1.2(a)(1) provide that *“Solid waste means, except as described in paragraph (4) of this subdivision, any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the State of New York and the government of the United States (see section 360-1.3 of this Subpart).”*
12. Regulations at 6 NYCRR 360-1.5 (a) provide that *“Except as provided for in Subparts 360-10 and 360-17 of this Part, no person shall dispose of solid waste in this State except at:
(1) a disposal facility exempt from the requirements of this Part; or
(2) a disposal facility authorized to accept such waste for disposal pursuant to this Part or to a department-issued or court-issued order.”*
13. Respondent violated regulations at 6 NYCRR 360-1.5 (a) by unlawfully disposing of solid waste.

Civil Penalty

14. ECL 71-2703 provides that any violator of Articles 3 or 7 of the provisions of Article 27 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to Seven thousand five hundred dollars (\$7,500) for each violation and an additional penalty of not more than \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

Waiver of Hearing

15. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and have 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:

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of FOUR THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$4,720) of which THREE THOUSAND DOLLARS (\$3,000) 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 ONE THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$1,720) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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

In the event that Respondent fails to comply with the requirements of this Order 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 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. 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.

V. For the purpose of ensuring 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.

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

VII. 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 employees, its servants, its agents, its successors or its assigns.

VIII. 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, its servants, its employees, its successors and its 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 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.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

X. 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 submittals shall be incorporated into and become an enforceable part of this Order.

(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 twenty (20) 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. This shall be considered a violation of the Order. The Respondent reserves its right to contest the alleged violation.

XI. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: June 22, 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 rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

City of Cohoes

SIGNED: [Signature]

TITLE: Mayor

DATE: 6/16/2017

STATE OF New York)

COUNTY OF Albany))ss.:

On the 16th day of June in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Shawn Morse 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:
My Commission Expires:

DEBORAH J. JACQUES
Notary Public, State of New York
Qualified in Albany County
Reg. No. 01JA972347
Commission Expires September 24, 2018

SCHEDULE OF COMPLIANCE

1. Upon execution of the Order, Respondent shall not dispose of any additional waste at the site.
2. Within 15 days of the effective date of the Order, Respondent shall meet Department staff at the site in order to discuss closure and restoration of the site.
3. Within 30 days of effective date of the Order, Respondent shall submit to the Department, a Closure Plan ("Plan") for the site that addresses regulations at 6 NYCRR 360-7.2(c)(1)-(5), and includes removal of waste, restoration of the site and a means to effectively prohibit and deter any future dumping at the site. Respondent shall provide to the Department, receipts as proof of and disposal of waste at an authorized facility. All activities shall be completed within 6 months from the Department's approval of the Plan.
4. Within 30 days from the effective of the Order, Respondent shall inform the Department how the municipality will manage yard waste, C&D debris, and land clearing debris that is generated by and within the City of Cohoes after the effective date.
5. Respondent shall not dispose of yard waste, C&D debris, and land clearing debris at any other sites unless the disposal is in accordance with applicable requirements of Part 360 and any approved plans as required above.