

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 2857

April 11, 2016

Carver Laraway
Coeyman's Recycling Center, LLC
40 Riverview Road
Coeymans, NY 12143


Re: Order on Consent
R4-2016-0120-12

Dear Mr. Laraway:

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

This will also acknowledge receipt of \$7,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: C. Buetow



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17

-by-

ORDER ON CONSENT
File No. R4-2016-0120-12

Coeymans Recycling Center, LLC
40 Riverview Road
Coeymans, NY 12143

Respondent

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.
2. Respondent, Coeymans Recycling Center, LLC, is a recycling facility located at 40 Riverview Road, Coeymans, New York ("site").
3. The facility is authorized under a SPDES Multi-Sector General Permit for Stormwater Discharges associated with Industrial Activity (GP-0-12-001) (MSPG) and SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) (Construction GP).
4. Respondent is a person as defined at ECL §17-0105(1).
5. Respondent is currently constructing lay down areas in the Town of Coeymans.
6. Respondent was made aware in a July 7, 2015 inspection report based upon an April 23, 2015 site inspection, and multiple verbal discussions, that more than five acres were not to be disturbed without prior Department approval.
7. On August 18th, 2015, Respondent made a request to the Department, to disturb greater than five acres on the north side of the property. The initial request did not contain sufficient information to grant the five acre waiver.
8. On December 23, 2015, Respondent made a second request to disturb greater than five acres. Department staff contacted the SWPPP preparer and advised them that the documentation was being reviewed and they would be contacted upon completion of that review.

9. On December 28, 2015, December 30, 2015, January 4, 2016, and January 7, 2016, weekly compliance inspections were conducted and submitted to the Department, all of which documented a total site disturbance of greater than five acres.

10. At the time of the submissions referenced in No. 8 above, the Department had not issued a 5-acre waiver to Respondent.

11. ECL § 17-0505 provides that *“The making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by section 17-0701 or title 8 hereof are prohibited.”*

12. Part II.C.3 of the SPDES General Permit for Stormwater Discharges for Construction Activity provides that *“The owner or operator of a construction activity shall not disturb greater than five (5) acres of soil at any one time without prior written authorization from the Department...”*

13. Regulations at 6 NYCRR Part 750-1.4(b) provides that *“For discharges of storm water 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.”*

14. Respondent violated ECL § 17-0505, Part II.C.3 of the SPDES General Permit for Stormwater Discharges for Construction Activity, and regulations at 6 NYCRR Part 750-1.4(b) by disturbing greater than five acres of the site without a permit.

15. ECL §71-1929 provides for the following civil penalties: *“A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”*

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

I. Respondent is assessed a civil penalty in the amount of TWENTY TWO THOUSAND DOLLARS (\$22,000). SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) of the civil penalty is due upon the return of the signed and notarized copy of this Order to the Department. The balance of the penalty, FOURTEEN THOUSAND FIVE THOUSAND DOLLARS (\$14,500), shall be suspended, and shall not be payable, provided that Respondent complies with the requirements in the Schedule of Compliance.

In the event that the Respondent fails to fully comply with the requirements in the Schedule of Compliance, the entire portion of the suspended penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties and relief for violations of this Order by Respondent. Respondent shall deliver the suspended penalty amount to the Department within twenty business days after receipt of such written notice to the Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without prior notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Water Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

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 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.

XI. 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 Respondents 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. 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.

XIII. 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.

XIV. 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.

DATED: April 8 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Acting 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.

Coeymans Recycling Center, LLC

Authorized Representative Carver Laraway

SIGNED: [Signature]

TITLE: Member

DATE: 3/28/16

STATE OF New York)

COUNTY OF Schenectady)
)ss.:

On the 28th day of March in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Carver Laraway 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: Schoharie
My Commission Expires: July 13, 2017

LISA M. BOOMHOWER
Notary Public - State of New York
ID No. - 01BO6209022
Qualified in Schoharie County
Commission Expires July 13, 2017

Schedule of Compliance

1. Effective immediately, Respondent must maintain less than 5-acres of disturbed soil until such time as the 5-acre waiver is granted.