

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Articles 17 and 27 and Title 6
of the Official Compilation
of Codes, Rules and Regulations
of the State of New York ("6 NYCRR")

ORDER ON CONSENT
File No. R4-2008-1222-178

- by -

Robert Compton

Respondent

WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the collection, treatment and disposal of solid waste pursuant to ECL Article 27 and applicable regulations.
2. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17 and the rules and regulations promulgated pursuant thereto.
3. Respondent, Robert Compton, owns property located at 45 Timm-Loeffler Road, Roxbury, New York (Delaware County) ("site"). The site is operated as Greene-Del Sanitation and Recycling.

Solid Waste Violations

4. On December 10, 2008, Department staff observed that Respondent had disposed of solid waste on the ground at the site. Staff also observed 10 roll-off boxes containing Construction and Demolition debris on the site which requires a permit to operate as a transfer facility. Respondent does not have a permit to operate a transfer facility at the site.
5. 6 NYCRR 360-1.5(a)(2) provides that no person shall dispose of solid waste except at a disposal facility authorized to accept such waste for disposal.
6. Respondent's disposal of solid waste on the ground at the site is a violation of 6 NYCRR 360-1.5(a)(2).
7. 6 NYCRR 360-1.7(a)(1)(I) provides that no person shall construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit.

8. Respondent's failure to obtain a permit to operate a transfer station at the site is a violation of 6 NYCRR 360-1.7(a)(1)(I).

Stormwater Violations

9. Regulations at 6 NYCRR Part 750-1.4(b) provide that storm water discharged to surface waters from industrial activities, and construction activities involving total soil disturbances of greater than one acre, are subject to a State Pollutant Discharge Elimination System ("SPDES") permit.

10. ECL 17-0505 prohibits: "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 17-0701 or title 8 hereof."

11. The Department has issued a Multi Sector General Permit for Stormwater Discharges from Industrial Activity, GP-0-06-002 ("Multi Sector permit").

12. Under the Multi Sector permit, a Storm Water Pollution Prevention Plan ("SWPPP") must be developed which identifies sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with the industrial activity. The SWPPP must also describe and ensure the implementation of best management practices which are to be used to reduce the pollutants in stormwater.

13. The development and implementation of the SWPPP is required prior to submission of the Notice of Intent or Termination ("NOIT") in order to be covered by the Multi Sector permit. Coverage under the Multi Sector permit does not begin until 30 calendar days after receipt of a complete NOIT.

14. On December 10, 2008, Department staff conducted an inspection of the site ("inspection") and observed a discharge of stormwater associated with scrap metal recycling activity. Significant clearing of the property was also observed. An intermittent stream was running through the metal recycling area and discharging pollutants into the stream adjacent to the site.

15. On December 15, 2008, Respondent submitted an electronic copy of an NOIT to obtain coverage under SPDES Multi Sector Permit. The original, signed copy of the NOIT has not been received by the Department. Respondent did not have coverage under the Multi-Sector permit when the scrap metal recycling activity was observed. Respondent did not have coverage under the Multi Sector permit at the time of the inspection, nor had Respondent implemented the pollution prevention controls set forth in the SWPPP at the site prior to the submission of the NOIT.

16. Respondent's discharge of stormwater associated with industrial activity without a SPDES Multi Sector permit is a violation of 6NYCRR Part 750-1.4(b) and ECL 17-0505.

17. The Department has issued a General Permit for Stormwater Discharges from Construction Activity, GP-0-08-001 (“Construction permit”).

18. Under the Construction permit, a discharger, owner or operator must submit a Notice of Intent (“NOI”) to the Department for coverage under the Construction permit prior to commencing any construction activity that will ultimately disturb one or more acres of land that discharges to the waters of the US.

19. The NOI for coverage under the Construction permit must contain a certification that a SWPPP has been completed for the affected area. The SWPPP must be based on sound engineering practices and must include erosion and sediment controls during construction and post-construction stormwater control practices.

20. Respondent has already disturbed 0.87 acres at the site. The inclusion of the additional soils disturbances associated with Part 360 permit requirements and New York City Department of Environmental Protection (“NYCDEP”) requirements will result in a total soils disturbance in excess of 1 acre for the site. A Construction permit was therefore required prior to the commencement of construction at the site.

21. Respondent’s commencement of construction activities at the site without a SPDES Construction permit is a violation of 6NYCRR Part 750.1.4(b) and ECL 17-0505.

22. ECL 71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five dollars (\$37,500). Injunctive relief is also available.

23. ECL §71-2703(1) provides that any person who violates any provision of title 3 or 7 of Article 27 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for a first violation and one thousand five hundred dollars (\$1,500) for each day the violation continues, and may be enjoined from continuing such violation.

24. Respondent has affirmatively waived his 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 its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violation, a civil penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000) is hereby assessed against the Respondent. FIFTEEN THOUSAND DOLLARS (\$15,000) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, FIFTEEN THOUSAND DOLLARS (\$15,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. 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. The provisions of this Order shall be deemed to bind Respondent, his agents, employees, and all persons, firms, corporations acting under or for him.

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, his 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 proper 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:

Regional 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, his agents, his servants, his employees, his successors and his 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 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. 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: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Robert Compton

DATE:_____

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

On the__day of _____in the year____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, 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.

Notary Public
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Respondent shall immediately stop all construction activity at the site, including clearing, grading and excavating until Respondent receives coverage under the NYSDEC General Permit for Stormwater Discharges from Construction Activity (GP-0-08-001). Prior to obtaining coverage under the General Permit, Respondent may continue with work necessary to stabilize existing disturbed soils, implement a Department approved Stormwater Pollution Prevention Plan, eliminate any water quality violation, correct health and safety issues, or other such activity in a manner directed or approved by the Department. Respondent may process the C&D material and UCM which was on site at the time of the December 10, 2008 inspection and shall remove all container storage to allow the stabilization of exposed soils. No further processing of materials may occur until Respondent receives written authorization from the Department.
2. Within 10 days of the effective date of this Order, Respondent shall provide to Region IV Division of Water and New York City Department of Environmental Protection (“NYCDEP”), an interim erosion and sediment control plan and proposed implementation schedule developed in accordance with the NYSDEC General Permit for Stormwater associated with Construction Activity (GP-0-08-001). Such plan shall include provisions to manage the flow of the intermittent stream so as to keep the stream from flowing through areas of industrial activity or areas of disturbance. The plan shall also include construction details and schedule to stabilize exposed soils in the truck maneuvering and parking areas and scrap metal handling areas using gravel, crushed stone or slag applied in accordance with the NYS Standards & Specifications for Erosion & Sediment Control. Upon approval, this plan shall be enforceable under the Order.
3. Within 7 days of the effective date of this Order, Respondent shall retain a qualified inspector to inspect the site on a weekly basis to evaluate the site and ensure that the interim plan is effective in preventing water quality violations. Where the deficiencies are noted or the plan is determined to be ineffective in preventing the discharge of pollutants to waters of the US, they shall be modified under the direction of the qualified inspector. Deficiencies shall be corrected within 48 hours.
4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, as well as to the NYCDEP, for approval, a revised SWPPP that meets the requirements of Section 18-39 (b)(3)(V) of the Watershed Rule and Regulations, Construction Permit (GP-0-08-001) and Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-06-002).
5. Compliance with the terms and conditions of the Schedule of Compliance is not a defense to any subsequent water quality violations.