

**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 6314

April 20, 2018

Matthew D. Wagoner, Esq.  
The Wagoner Firm, PLLC  
150 State Street, Ste 504  
Albany, NY 12207

Re: Order of Consent  
R4-2018-0307-38  
Daniel Blair

Dear Mr. Wagoner:

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

Sincerely,



Stephen Repsher  
Assistant Regional Attorney  
Region 4

Enclosure

ec: T. Christoffel  
G. McPherson

# STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Article 19  
of the Environmental Conservation Law  
of the State of New York and Title 6 of the  
Official Compilation of the Codes, Rules, and  
Regulations of the State of New York

## ORDER ON CONSENT

-by-

File No. R4-2018-0307-38

Daniel Blair  
682 Elm Avenue  
Selkirk, NY 12158,

Respondent.

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## WHEREAS:

### Jurisdiction

1. The New York State Department of Environmental Conservation (the “Department” or “DEC”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-0301 of the Environmental Conservation Law (“ECL”). Specifically, the Department is and has been responsible for the protection of air resources of the State pursuant to ECL Article 19 and the rules and regulations promulgated thereunder.

### Respondent

2. Respondent is an individual residing at 682 Elm Avenue, Selkirk, New York.
3. Respondent owns and operates an outdoor wood boiler (“OWB”) located on the premises at 672 Elm Avenue, Selkirk, New York (Tax Parcel Number 109.00-2-51.000) (the “Site”).
4. Respondent is a person as defined in and 6 NYCRR § 200.1(bi).

### OPACITY VIOLATION

5. On February 9, 2018, Department staff certified to perform EPA Reference Method 9 opacity observations observed an OWB in operation at the Site.

6. Department staff performed visual emissions observations of the smoke coming from the OWB stack in accordance with EPA Reference Method 9.

7. During these observations, Department staff determined the highest six minute average opacity block to be 73.5%.

8. State air regulation 6 NYCRR 247.3(d) provides, "[n]o person shall operate an outdoor wood boiler in such a manner as to create a smoke plume with an opacity of 20 percent or greater (six minute mean) as determined using EPA Reference Method 9 (or equivalent)."

9. Respondent violated 6 NYCRR § 247.3(d) by failing to operate the OWB within the mandated 20% opacity standard.

### **Civil Penalty**

19. ECL Section 71-2103 provides for a civil penalty of not less than \$500 and not more than \$18,000 for each violation of Article 19 or any code, rule, or regulation promulgated thereto.

### **Waiver of Hearing**

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

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

I. **Civil Penalty.** Respondent is hereby assessed a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) for the violations recited in this Order. The civil penalty is suspended and shall not be payable, *provided that* Respondent fully and timely complies with the requirements of this Order on Consent and its Schedule of Compliance. If Respondent fails to comply with any such requirements, the entire suspended penalty may become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

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

III. **Communications.** All communications required herein shall be made to:

For the Department:

Department of Environmental Conservation  
Region 4  
1130 North Westcott Road,  
Schenectady, NY 12306,  
Attn: Regional Engineer;

For the Respondent:

Daniel Blair  
682 Elm Avenue  
Selkirk, NY 12158

IV. **Access.** Respondent shall allow duly authorized representatives of DEC access to the facilities without prior notice, at such times as may be desirable or necessary for DEC to inspect and determine the status of Respondent's compliance with this Order and the ECL.

V. **Summary Abatement.** 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.

VI. **Indemnification.** Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, 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.

VII. **Modification.** 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, such change to be made only upon written agreement of the parties.

VIII. **Schedule of Compliance.** The attached Schedule of Compliance is incorporated into the Order on Consent.

IX. **Effective Date.** The effective date of this Order shall be the date it is signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

X. **Termination.** This Order shall terminate upon the Department's determination that Respondent has complied with all the requirements of this Order.

XI. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent for any other violations of the ECL, rules, or regulations promulgated thereunder;

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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.

**XII. Review of Submitted Documentation.** 1. All documents Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order 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; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

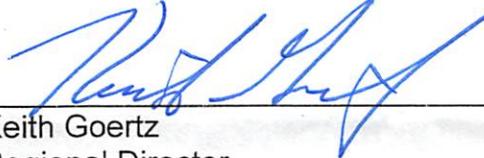
4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

DATED: Rotterdam, New York

April 19, 2018

BY:

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation



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Keith Goertz  
Regional Director  
Region 4

**CONSENT BY RESPONDENT**

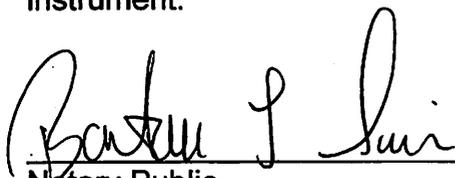
Respondent hereby consents to the issuing and entering of this Order on Consent, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

SIGNED:   
PRINT: Daniel J Blair  
DATE: 4/11/18

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

On the 11<sup>th</sup> day of April in the year 2018, before me, the undersigned, personally appeared Daniel J. Blair, personally known (Full name)

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/her capacity, and that by his/her signature on said 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: 1/29/19

BARBARA L. SIMON  
Notary Public - State of New York  
No. 018725601  
County of Saratoga  
My Commission Expires on 1/29/2019

## **SCHEDULE OF COMPLIANCE**

1. **On or before May 15, 2018**, Respondent shall permanently cease operations of the outdoor wood boiler, disassemble it, and submit proof of disassembly within 30 days to the Department.
2. Upon disassembly of the outdoor wood boiler, Respondent shall not resell it within New York State.
3. Compliance with this Schedule shall not be a defense to subsequent violations