

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0822

January 6, 2015

Mark Wilson
Deposit Wood Pellet, LLC
1580 Airport Road
Deposit, NY 13754

Re: Order of Consent
R4-2014-0818-138

Dear Mr. Wilson:

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

This will also acknowledge receipt of \$5000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: M. Lanzafame

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law,
Article 19

Order on Consent
File No. R4-2014-0818-138

-by-

Deposit Wood Pellet, LLC
1580 Airport Road
Deposit, NY 13754

Respondent

WHEREAS:

Jurisdiction

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
2. Respondent owns/operates a Deposit Wood Pellet, LLC, a wood pellet manufacturing plant located at 1580 Airport Road, Deposit, New York ("facility").
3. In September of 2012, Respondent determined that their existing cyclones did not meet the standard for fire and explosion hazards under NFPA 654 regulation. As a result of that determination, the facility removed the existing cyclones and installed new cyclones in September of 2013.
4. On August 14, 2014, Department staff inspected the facility.

First and Second Violations

5. Regulations at 6 NYCRR 200.1(aq) describes a modification as "*any physical change, or change in the method of operation of an incinerator, stationary combustion installation or process which (1) increases the hourly emission rate, emission concentration or emission opacity of any air contaminant, or (2) involves the installation or alteration of any air cleaning installation, air cleaning device or control equipment, or (3) involves conversion of fuel used in any emission source to a fuel with a higher ash content than the fuel used prior to the change, or (4) involves the alteration of any furnace or physical changes to allow burning of refuse or refuse-derived fuel with fossil fuel, or (5) results in the emission of any air pollutant not previously emitted or authorized under the permit. Routine maintenance, repair and replacement of original equipment or parts thereof are not considered physical changes. An increase or decrease in the hours of operation is not considered a change in the method of operation if the*

total emissions do not cause air pollution or contravention of any applicable ambient air quality standard, and the hours of operation are not restricted through a condition of a permit or certificate issued for the air contamination source. A physical change or a change in the method or operation shall not include the use of an alternative fuel or raw material which:

(1) the facility or emission source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR part 52.21; or

(2) the facility or emission source is approved to use under any permit issued under 40 CFR part 52.21.”

6. Regulations at 6 NYCRR 201-5.4(a) requires that “*an application for permit modification must be submitted by the owner or operator of a facility, subject to the provisions of section 201-5.2 of this Subpart, prior to making any of the following changes at an existing facility:*

(1) modifications to existing emission sources as defined under section 200.1 of this Title;

(2) the addition of a new emission source;

(3) changes to any existing permit terms or conditions; or

(4) changes that cause the facility to become subject to any additional requirements or regulations under this Title.”

7. Regulations at 6 NYCRR 201-5.4(b) provide that “*the modified permit must be issued before the facility owner or operator may commence construction or operation of the requested modifications.”*

8. As a result of the modification of the air pollution control equipment, Respondent should have submitted a permit modification application in advance of making the changes. By failing to do so, Respondent, violated regulations at 6 NYCRR 201-5.4(a) and 6 NYCRR 201-5.4(b).

9. ECL Section 71-2103(1) provides that: ... “*any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”*

Waiver of Hearing

10. 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.

Civil Penalty

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 FIVE THOUSAND DOLLARS (\$5,000) which 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.

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 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.

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.

DATED: Jan 5, 2015
Rotterdam, New York

Joseph J. Martens
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.

Deposit Wood Pellet, LLC

SIGNED: Mark Wilson

TITLE: CEO

DATE: JANUARY 2, 2015

STATE OF New Hampshire

)
)ss.:

COUNTY OF Cheshire

On the 2nd day of January in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Mark Wilson 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:

2-2-2016
LUANN LAFRENIERE, Notary Public
My Commission Expires February 2, 2016