

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

7012 3050 0000 4246 2644

August 25, 2014

Chief Donald Rekse
Hagaman Volunteer Fire Department, Inc.
PO Box 328
Hagaman, NY 12086

Re: Order of Consent
R4-2014-0718-130

Dear Chief Rekse:

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

This will also acknowledge receipt of \$100 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: G. McPherson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Order on Consent
File No. R4-2014-0718-130

-by-

Hagaman Volunteer Fire Department, Inc.
PO Box 328
Hagaman, NY 12086

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 operates a Volunteer Fire Department located at 126 S. Pawling Street, Hagaman, New York.
3. On July 1, 2014, Department staff observed an open fire on property located at 234 Wallins Corners Road, Amsterdam, New York ("site"). The fire contained debris from a dismantled barn, brush and stumps.
4. Department staff determined that the Chief of the Hagaman Volunteer Fire Department authorized the property owner to burn the pile of debris at the site.
5. Regulations at 6 NYCRR 215.2 provide that "*except as allowed by section 215.3 of this Part, no person shall burn, cause, suffer, allow or permit the burning of any materials in an open fire.*" The open burning conducted at the site does not meet any of the exemptions listed in regulations at 6 NYCRR 215.3.
6. Respondent's authorization of the open burn was in violation of regulations at 6 NYCRR 215.3.

Civil Penalty

7. 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

8. 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 aforesaid violation, a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) is hereby assessed against the Respondent of which ONE HUNDRED DOLLARS (\$100) 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 FOUR HUNDRED DOLLARS (\$400) 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 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.

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.

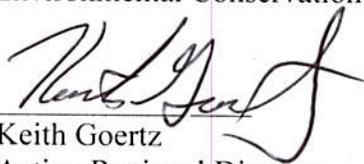
(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the 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. Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

DATED: *August 25*, 2014
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Acting Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Immediately upon execution of the Order, Fire Department personnel shall not recommend or authorize any open burning in contradiction to the provisions set forth in the 6 NYCRR 215 regulation.
2. By October 1, 2014, Respondent shall send out a mailing to all residents in the district, advising of the open burn regulation. Prior to the mailing, Respondent shall submit to the Department for approval, a copy the proposed letter.