

**New York State Department of Environmental Conservation
Office of General Counsel, Region 4**

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

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED
7012 3050 0000 4246 2545

December 22, 2014

Jeff Wyskochil
75 Turnabout Road
West Sand Lake, NY 12196

Re: Order on Consent
R4-2014-1113-167

Dear Mr. Wyskochil:

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

Sincerely,

Karen 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 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. R4-2014-1113-167

-by-

Jeff Wyskochil
75 Turnabout Road
West Sand Lake, New York 12196

Respondent

WHEREAS:

JURISDICTION

1. Pursuant to Environmental Conservation Law ("ECL") Article 19, the Department of Environmental Conservation ("Department" or "DEC") is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law (ECL).
2. Pursuant to ECL Article 19, the New York State Department of Environmental Conservation has administrative jurisdiction to safeguard the air resources of the state from pollution.

RESPONDENT

3. Respondent, Jeff Wyskochil, owns and occupies a residence at 75 Turnabout Road, West Sand Lake, New York ("residence").
4. Respondent owns and operates an outdoor wood boiler ("OWB") at his residence.
5. Respondent is a "person" as defined at 6 NYCRR 200.1(bi).
6. On October 29, 2014, Department staff inspected the OWB at Respondent's residence.

VIOLATION

7. Regulations at 6 NYCRR §247.3(a) prohibit the installation of a new residential outdoor wood boiler that is not an EPA certified white tag unit.
8. At the time of the inspection, Department staff observed the fully operational OWB at Respondent's residence (Wood Master brand serial No. 312272) and determined that it is not an EPA certified wood boiler white tag unit and was installed within the past year.
9. The operation and installation of this OWB is in violation of regulations at 6 NYCRR §247.3 (a).

CIVIL PENALTY

10. Section 71-2103 generally 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 which was promulgated thereto.

WAIVER OF HEARING

11. Respondent hereby affirmatively waives his right to a hearing in the manner provided by law, consent to the issuance and entry of this Order and agree to be bound by the terms, provisions, and conditions contained herein.

NOW, being duly advised and having considered this matter, IT IS HEREBY ORDERED THAT:

- I. In respect of the aforesaid violations, a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) is assessed against the Respondent for the above violations. The civil penalty is suspended conditioned on Respondent's compliance with the terms, conditions and provisions of this Order on Consent. Payment of the suspended penalty shall be due within fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets out the violations of the Order. This provision shall not limit the Department's right to seek other remedies provided by law and the applicable regulations for violations of this Order on Consent and ECL Article 19 and regulations, respectively.
- II. Respondent shall comply with the attached Schedule of Compliance.
- III. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.
- IV. This Order is binding upon the Respondent, his - agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. All communications to the Department except where otherwise specifically directed should be sent to:

New York State Department
of Environmental Conservation
Region 4 - Air Division Attn: RAPCE
1130 North Westcott Road
Schenectady, New York 12306
518-357-2350

VI. 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.

VII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the location of the OWB in order to inspect to determine the status of Respondent's compliance with this Order.

VIII. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

IX. 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, his - employees, servants, agents, successors or assigns.

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, servants, employees, successors and 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 he 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. 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: 12/22, 2014
Rotterdam, New York

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

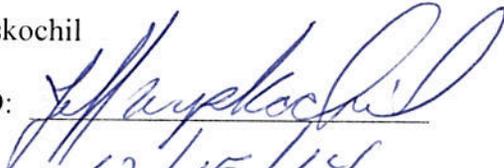
BY:


Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives his rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Jeff Wyskochil

SIGNED: 

DATE: 12/15/14

STATE OF NEW YORK)

COUNTY OF Rensselaer)

)ss.:

On the 15th day of December in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Jeff Wyskochil 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 and that by his signature on the instrument, the Respondent executed the instrument.



Notary Public

Qualified in the County of:

My Commission Expires:

RICHARD D. CERESIA
Notary Public - State of New York
Qualified in Rensselaer County
No. 02 CE 4689555
Commission Expires 11/30/17

SCHEDULE OF COMPLIANCE

- 1) Effective immediately, Respondent shall cease the operation of the OWB located at 75 Turnabout Road, West Sand Lake. The OWB shall be disconnected and rendered incapable of use.

- 2) Within 90 days of the effective date of the Order, Respondent shall provide the Department with photographic evidence to establish that the OWB was rendered incapable of use.