

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8480

June 28, 2018

John Blish
160 Kissimmee Road
Fleishmanns, NY 12430

Re: Order on Consent
R4-2018-0322-83

Dear Mr. Blish:

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

This will also acknowledge receipt of \$1,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Weidman
V. Bauer, ECO

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law ("ECL"),
Article 27

Order on Consent
File No. R4-2018-0322-83

-by-

John Blish
160 Kissimmee Road
Fleischmanns, NY 12430

Respondent

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, *inter alia*, ECL 3-0301. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities pursuant to Article 27 of the New York State Environmental Conservation Law (ECL).
2. Pursuant to authority granted to the Department under ECL Article 27, rules respecting the permitting, registration and operation of solid waste management facilities were promulgated at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 360 *et seq.*
3. Respondent, John Blish owns property located at Bruce Scudder Road, Halcott, New York (Tax Parcel No. 173.00-1-1) ("site").

Regulations

4. Regulations at 6 NYCRR 360.9(b)(3)(ii) provide that a person or persons shall not dispose of waste, beyond initial collection, except at a disposal facility authorized by the department to accept the waste.

First Violation

5. On July 5, 2017, Department staff inspected the site and observed several piles of construction and demolition debris located on the site. The following material was observed: Painted and treated wood, plywood, oriented strand board (OSB), particle board, discarded electronics (printer), metal and plastics materials, fluorescent light bulbs, carpet, rock, brick and land clearing debris.
6. By disposing of waste at the site, which is not a disposal facility authorized by the Department, Respondent violated regulations at 6 NYCRR 360.9(b)(3)(ii).

Civil Penalty

7. ECL 71-2703 provides that any violator of Articles 3 or 7 of the provisions of Article 27 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to Seven thousand five hundred dollars (\$7,500) for each violation and an additional penalty of not more than One thousand five hundred dollars (\$1,500) per day during which the violation continues and may be enjoined from continuing such violation.

Waiver of Hearing

8. Respondent has affirmatively waived his 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. In respect of the aforesaid violations, a civil penalty in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) of which ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) shall be payable to the New York State Department of Environmental Conservation by money order, or check at the time this Order is signed, notarized and returned to the Department.

The balance SIX THOUSAND DOLLARS (\$6,000) 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, his 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, his employees, his servants, his agents, his successors or his 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 Respondents, their agents, their servants, their employees, their successors and their 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 Respondents.

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 his right to contest the alleged violation.

XI. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: *June 27*, 2018
Rotterdam, New York

Basil Seggos
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 his rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

John Blish

SIGNED: John Blish

TITLE: President

DATE: June 19 2018

STATE OF New York)

)
)ss.:

COUNTY OF Delaware)

On the 19th day of June in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared John Blish 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.

Beth A Bush

Notary Public

Qualified in the County of: Delaware

My Commission Expires: 8/10/18.

Beth A Bush
Notary Public, State of NY
Cert filed in Delaware County
Registration # 01BU6011430
Commission Expires: 08/10/2018

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall not accept or discard any additional waste at the site.
2. Within 30 days of the effective date of this Order, Respondent shall remove all solid waste from the site and dispose of it at an authorized facility.
3. Within 10 days of disposal, Respondent shall submit to the Department, receipts of proof of transportation and disposal of all waste at an authorized facility.