

**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](http://www.dec.ny.gov)

CONFIRMATION BY EMAIL ORDER RECEIVED

February 8, 2019

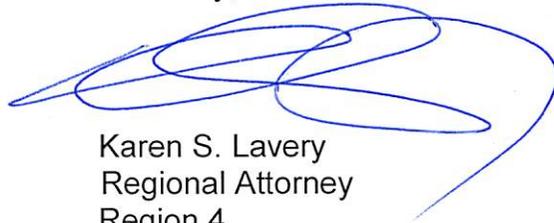
Gus Gillberg  
Tischler Gillberg, LLC  
3 Lear Jet Lane, Suite 201  
Latham, NY 12110  
[Gus@tischlergillberg.com](mailto:Gus@tischlergillberg.com)

Re: Order on Consent  
R4-2018-0515-131  
John DiCaprio

Dear Mr. DiCaprio:

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

Sincerely,



Karen S. Lavery  
Regional Attorney  
Region 4

Enclosure

ec: V. Schmitt  
J. Whitcomb



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of  
Article 27 of New York  
State Environmental Conservation Law

**ORDER ON CONSENT**  
R4-2018-0515-131

-by-

John DiCaprio  
310 Eleventh Street  
Schenectady, NY 12306

Respondent

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WHEREAS:

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 DiCaprio resides at 310 Eleventh Street, Schenectady, New York.
4. Respondent John DiCaprio has indicated to the Department that he is purchasing the property located at 45 Cheltingham Avenue, Schenectady, New York, 12306 ("site").
5. The property located at 45 Cheltingham Avenue, Schenectady, New York, is subject of Order on Consent R4-2012-0113-5, effective February 29, 2012.
6. Order on Consent R4-2012-0113-5 contains a Schedule of Compliance that was never satisfied.
7. Respondent has agreed to undertake the remedial work set forth in the Schedule of Compliance. This Order's Schedule of Compliance supersedes the Schedule of Compliance in Order on Consent R4-2012-0113-5

### Civil Penalty and Injunctive Relief

8. 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

9. Respondent has affirmatively waived his right to a hearing in the manner provided by law and has consented to the issuing of this Order on Consent and has agreed 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. Civil Penalty

In respect of the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) is assessed against the Respondent. The civil penalty is suspended conditioned on Respondent's compliance with the terms, conditions and provisions of this Order on Consent's Schedule of Compliance. In the event that Respondent violates the Schedule of Compliance, 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 Schedule. 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. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent. The Schedule of Compliance provided in this Order on Consent supersedes the one contained in R4-2012-0113-5.

#### III. Communications:

All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention- Jon Whitcomb. All communications shall include a reference to the Order on Consent Case Number R4-2018-0515-131,

#### IV. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or 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 DEC, New York State, and their representatives and employees harmless 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, his directors, officers, employees, servants, agents, successors or assigns.

#### VII. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 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 his respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so 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 of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission 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.

#### VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and his successors (including successors in title) and assigns.

#### IX. 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.

#### X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent.

#### XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

#### XII. Reservation of Rights

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.

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 officers, directors, 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 directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

XIII. 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.

DATED: February 7, 2019  
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 DiCaprio

SIGNED: 

TITLE: \_\_\_\_\_

DATE: 2-1-19

STATE OF New York

COUNTY OF Albany ) ss.:

On the 1<sup>ST</sup> day of February in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared JOHN DICAPRIO 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.



Notary Public  
Qualified in the County of:  
My Commission Expires:  
4-23-19

**KENNETH H. RIBERDY**  
Notary Public State of New York  
No. 01RI6057829  
Qualified In Rensselaer County  
My Comm. Expires April 23, 2019

## **SCHEDULE OF COMPLIANCE**

1. Within 3 months of the effective date of this Order, Respondent shall remove all liquid wastes from the site for management at a facility authorized to accept the material.
2. Within 6 months of the effective date of this Order, Respondent shall remove all waste tires from the site for management at a facility authorized to accept them.
3. Within 7 months of the effective date of this Order, Respondent shall provide to the Department receipts from the facilities that managed the wastes in Items #1 and #2.
4. Within one year of the effective date of this Order, Respondent shall remove all solid waste that was piled on the surface of the site and thrown over the bank, and discard all of the material at an authorized facility
5. All solid waste (excluding uncontaminated asphalt, concrete, brick, soil and rock) that is discovered from any future excavations occurring on-site must be discarded at an authorized facility within 5 days of discovery.