

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

CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 3052

May 23, 2016

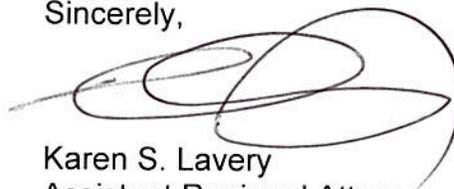
Martin Byler
3254 County Highway 18
New Berlin, NY 13411

Re: Order of Consent
R4-2016-0415-80

Dear Mr. Byler:

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

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: G. McPherson
M. Lanzafame



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of
Violations of Article 19
of the Environmental
Conservation Law of the
the State of New York by:

-by-

Order on Consent
File No. R4-2016-0415-80

Martin Byler
3254 County Highway 18
New Berlin, NY 13411

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 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, Martin Byler, owns/operates a saw mill located at 3254 County Highway 18, New Berlin, New York ("site").
4. Respondent is a "person" as defined at 6 NYCRR 200.1(bi).
5. On April 16, 2016, Department staff inspected the site and observed a band saw being used to cut boards from softwoods, a small diesel fired engine to power the saw, and a combustion unit to burn the cutoffs. The combustion unit appeared to have been fabricated using an old 1,000 gallon old bulk storage tank.
6. At the time of the inspection, Department staff observed a heavy particulate plume exiting the stack which had a consistent opacity in excess of 50% throughout the entire inspection.

7. Respondent had not obtained a registration prior to the operation of the combustion unit to burn scrap wood cutoffs.

VIOLATIONS

8. Regulations at 6 NYCRR §227.1.3(a) provide that *“No person shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six minute average), except for one six-minute period per hour of not more than 27 percent opacity.”*

9. Respondent violated regulations at 6 NYCRR §227.1.3(a) by operating the combustion unit in exceedance of the 20% opacity standard.

10. Regulations at 6 NYCRR §201.1.2(a) provide that *“Except as otherwise provided by this Part, construction or operation of a new, modified or existing air contamination source without a registration or permit issued pursuant to this Part is prohibited.”*

11. Respondent violated regulations at 6 NYCRR §201.1.2(a) by failing to obtain a registration prior to operation of a combustion unit.

CIVIL PENALTY

12. Section 71-2103 generally provides for a civil penalty of not less than \$375 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

13. 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:

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. 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. 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

V. 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.

VI. 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.

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

VIII. Respondent shall indemnify and hold the Department, the State of New York, and its 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.

IX. 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.

X. 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: *May 23* 2016
Rotterdam, New York

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

Martin Byler

SIGNED: Martin A Byler

DATE: 5-16-16

STATE OF New York

COUNTY OF Chenango) ss.:

On the 16th day of May in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Martin Byler 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.

Heather M. Hunt
Notary Public

Qualified in the County of: Chenango
My Commission Expires: 10-26-18

HEATHER M. HUNT
Notary Public - State of New York
No. 01HU6313602
Qualified in Chenango County
My Commission Expires Oct. 20, 2018

SCHEDULE OF COMPLIANCE

- 1) On or before June 30, 2016, Respondent shall permanently cease operation of the combustion unit and render it incapable of use, and submit proof (i.e. pictures) to the Department of compliance with this requirement within 30 days of disassembly.