

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott, Schenectady, New York 12306-2014

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

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3658

December 10, 2014

Ronald W. Prokopiak
The Coach Workes of Schoharie County, Inc
105 Ten Broeck Street
Albany, NY 12210

Re: Order on Consent
R4-2014-0206-22

Dear Mr. Prokopiak:

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

This will also acknowledge receipt of \$1250.00 1st of 4 payments of the civil penalty pursuant to Paragraph I. Your second payment as agreed upon of \$1250.00 is due on or before December 31, 2014.

Sincerely,

Karen s. Lavery
Assistant Regional Attorney
Region 4

cc: ECO J. DeAngelis

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations
of Articles 19 and 27 of the New York State
Environmental Conservation Law,
and Title 6, Part 360
et seq. of the Official
Compilation of Codes, Rules and
Regulations of the State of New York,

ORDER ON CONSENT
File No. R4-2014-0206-22

- by -

Ronald W. Prokopiak
The Coach Workes of Schoharie County, Inc.
105 Ten Broeck Street
Albany, NY 12210

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. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
3. 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.*

4. Respondent, Ronald W. Prokopiak, of 105 Ten Broeck Street Albany, New York, owns/operates The Coach Workes of Schoharie County, Inc., a dismantling business/ retail motor vehicle dealer/ repair shop/transporter, located at 4923 State Route 30, Middleburgh, New York (“site”).
5. The Respondent is a person as defined at 6 NYCRR 360-1.3(b)(117).
6. On May 11, 2013 and September 27, 2013, Department staff inspected the site located at 4923 State Route 30, Middleburgh, New York.

First Violation

7. At the time of the September 27, 2013 inspection, Department staff observed three piles of construction and demolition debris on the site with a total aggregate volume of approximately 560.07 cubic yards of waste. The composition of the waste was a compilation of car parts consisting of plastic, tires and small pieces of metal as well as sheetrock, carpet, tarps, plastic sheeting, insulation, wood, plastic drums, buckets and other waste products.
8. Regulations at 6 NYCRR §360-1.5 (a) provides that *“except as provided for in Subparts 360-10 and 360-17 of this Part, no person shall dispose of solid waste in this State except at:*
(1) a disposal facility exempt from the requirements of this Part; or
(2) a disposal facility authorized to accept such waste for disposal pursuant to this Part or to a department-issued or court-issued order.”
9. Respondent’s disposal of approximately 560.07 cubic yards of waste at the site is a violation of regulations at 6 NYCRR §360-1.5 (a).

Second Violation

10. At the time of the May 11, 2013 inspection, Department staff observed open burning of garbage at the site which included C & D material from a dismantled camping trailer, from which metal was salvaged and the remaining material burned.
11. 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.”*
12. Respondent’s open burning of garbage at the site is a violation of regulations at 6 NYCRR §215.2.

13. 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 \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

14. Respondent consents to the issuance and entry of the foregoing Order, waives the right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

Civil Penalty

15. 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."

16. ECL Section 71-2703 provide 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 \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

Waiver of Hearing

17. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. With respect to the aforesaid violations, a civil penalty in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) of which FIVE THOUSAND DOLLARS (\$5,000) 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 TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$1,250.00 with the return of the Order by November 14, 2014;
2. \$1,250.00 by December 12, 2014;
3. \$1,250.00 by January 16, 2015;
4. \$1,250.00 by February 13, 2015;

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. The provisions of this Order shall be deemed to bind Respondent, his agents, employees, and all persons, firms, corporations acting under or for them.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and his representatives and employees 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 directors, officers, employees, servants, agents, successors or assigns.

IV. 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.

V. This Order is deemed effective on the date signed by the Department.

VI. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

VII. 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 Respondents 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, his servants, his employees, his successors and his 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 or any other third party, provided, however, that Respondent waive 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.

VIII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph IV of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of his obligations to obtain such formal approvals as may be required by this Order.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: *December 9*, 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 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.

Ronald W. Prokopiak

SIGNED: Ronald W. Prokopiak

TITLE: President

DATE: 12/5/14

STATE OF New York

COUNTY OF Albany) ss.:

JOY K. KECK
Notary Public, State of New York
No. 01KE6236722
Qualified in Saratoga County
Commission Expires March 7, 2015

On the 5 day of December in the year 14 before me, the undersigned, a Notary Public in and for the State, personally appeared Ronald Prokopiak 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.

J. Keck
Notary Public
Qualified in the County of:
My Commission Expires: March 7, 15

SCHEDULE OF COMPLIANCE

1. By January 30, 2015, Respondent shall remove all the waste piles from the site and properly dispose of them. Respondent shall submit to the Department, receipt(s) of proper disposal.