

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Article 27 of
the Environmental
Conservation Law

ORDER ON CONSENT

File No. R4-2009-0817-133

-by-

Town of Rotterdam

Respondent

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation ("DEC" or "the Department") is the State agency with jurisdiction over the environmental law and policy of the State pursuant to, inter alia, § 3-0301 of the Environmental Conservation Law ("ECL"). In particular, DEC regulates the operation of solid waste management facilities, pursuant to ECL § 27-0701 et seq. and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 360 et seq., and DEC are charged with administration of the State Pollutant Discharge Elimination System ("SPDES") pursuant to Article 17, Title 8 of the ECL and 6 NYCRR Parts 750-757.

2. Respondent operates a residential yard waste drop-off facility (North Side of Burdeck Street, east side of Princetown Road and west of the Larned and Sons garages) ("facility") pursuant to a permit ("permit") that expired on May 6, 2009 without Respondent applying for a renewal.

3. Respondent entered into Order on Consent R4-2007-0622-79 (August 3, 2007) for a violation of failing to timely renew the previous term of the permit.

4. Respondent's continued operation of the facility without a permit is a violation of 6 NYCRR 360-1.7 (a)(1)(I): "... no person shall construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to this Part..."

5. Respondent hereby affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order and Consent 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 TWO THOUSAND DOLLARS (\$2,000) is assessed against the Respondent for the above violation. Payment of the civil penalty by certified or bank check shall be due with the return of the signed and notarized Order.

II. Respondent shall comply with the attached Schedule of Compliance. The Schedule of Compliance is incorporated and made part of the provisions, terms, and conditions of this Order.

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, its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

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

Regional Solid Waste Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

VI. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Order because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provided, however, that the Respondent notifies the Department in writing within 3 days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

VII. 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.

VIII. 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.

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, its directors, officers, 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 or Navigation Law, rules or regulations promulgated thereunder or permits issued thereunder based upon other than existing contamination.

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, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. 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

E. 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.

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

XII. The existence of this Order shall not give rise to any presumption of law or fact or create any rights which shall inure to the benefit of any third party. For purposes of this provision the State is not considered a third party.

DATED: August , 2009
Rotterdam, NY

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY: _____

REGIONAL DIRECTOR
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order on Consent, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: _____

Supervisor Steven Tommasone

DATE: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF)

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, 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:

SCHEDULE OF COMPLIANCE

1. By September 4, 2009, Respondent shall submit a complete Article 27 solid waste management permit to the Department for the facility. Respondent shall cease operation of the facility and shall remove and properly dispose of any solid waste at the facility if a complete permit application is not submitted by September 4, 2009.