

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

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

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 0350 0000 4246 3740

October 4, 2013

Don Oster
Scotwood Industries, Inc
2980 Metcalf Ave
Suite 240
Overland Park, KS 66213

Re: Order on Consent
R4-2013-0904-111

Dear Mr. Oster

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

This will also acknowledge receipt of \$1500 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: G. McPherson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law,
Article 19

Order on Consent
File No. R4-2013-0904-111

-by-

Scotwood Industries, Inc.
2980 Metcalf Ave
Suite 240
Overland Park, KS 66213

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
2. Respondent, Scotwood Industries, Inc. owns a salt dryer combustion unit which is operated at the Port of Coeymans, 2170 Route 144, Coeymans, New York ("site").
3. On August 1, 2013, Department staff inspected the site and found the salt dryer to be in a steady state of operation and was emitting steam and a detached particulate plume.

First Violation

4. On August 1, 2013, a Department air engineer ("Department staff") certified in performing visual Method 9 opacity observations observed the salt dryer in steady state operation. The Department staff observed the emissions from the exhaust which had a detached particulate plume obscuring the background behind the dryer for parts of six minutes and maintained a range of 40% - 60% opacity for the remainder of the six minute period. The Department staff did not take six minutes of continuous 15 second readings because of the steady high opacity readings that continued in excess of six minutes thought the entire inspection period.
5. The August 1, 2013 Department staff opacity observations are credible evidence that the salt dryer violated regulations at 6 NYCRR 227-1.3(a).
6. 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.*"

7. Respondent violated Regulations at 6 NYCRR 227.1.3(a) by operating a salt dryer which exhibited greater than a 20 %, six minute opacity on August 1, 2013.

Second Violation

8. Regulations at 6 NYCRR 201-1.1(b) require that *“unless specifically exempted pursuant to Subpart 201-3 of this Part, owners and/or operators of air contamination sources must comply with this Part. Owners and/or operators of other emission sources must either register, pursuant to Subpart 201-4 of this Part, or obtain a State facility permit pursuant to Subpart 201-5 of this Part.”*

9. Regulations at 6 NYCRR 200.1 (f) define an *air contamination source or emission source as “any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system, air cleaning device, but excepting an indirect source of air contamination as defined in Part 203 of this Title. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.”*

10. The facility contains an exhaust point.

11. The exhaust point is an air contamination source as defined in 6 NYCRR 200.1 (f).

12. Respondent violated regulations at 6 NYCRR 201-1.1(b) by operating a non-exempt source at the facility without a registration or permit.

Civil Penalty

13. 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.”*

Waiver of Hearing

14. Respondent has affirmatively waived its 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 FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500) is assessed against the Respondent 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 certified check at the time this Order is signed, notarized and returned to the Department.

The balance (\$3,000) 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.

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, its 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, its employees, its servants, its agents, its successors or its 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 Respondent, its agents, its servants, its employees, its successors and its 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 Respondent.

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 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.

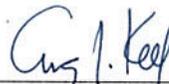
(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the 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 its 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: 10/4 , 2013
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Scotwood Industries, Inc.

SIGNED: Chase Wilson

TITLE: President

DATE: 10/01/13

STATE OF KS

COUNTY OF Johnson) ss.:
)

On the 1st day of October in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Chase Wilson 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.

Gena E. Beal
Notary Public
Qualified in the County of:
My Commission Expires:

NOTARY PUBLIC
STATE OF KANSAS
GENA E. BEAL
My Appointment Expires: 1-2-16

SCHEDULE OF COMPLIANCE

1. By November 30, 2013, Respondent shall permanently cease operation of the salt dryer combustion unit at the facility, disassemble the combustion unit and submit proof to the Department of compliance with this requirement.