

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 5959

January 25, 2018

Timothy Anatriello
TNT Landscaping, Excavation & Blacktopping, LLC
89 Consaul Road
Albany, NY 12205

Re: Order on Consent
R4-2017-1114-272

Dear Mr. Anatriello:

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

This will also acknowledge receipt of \$7,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Whitcomb
B. Maglienti

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law ("ECL"),
Article 27

Order on Consent
File No. R4-2017-1114-272

-by-

TNT Landscaping, Excavation & Blacktopping, LLC
89 Consaul Rd
Albany, NY 12205

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. 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, TNT Landscaping, Excavation & Blacktopping, LLC, is a professional excavating company in Albany NY offering driveway paving & asphalt paving services and also owns/operates a registered compost facility located at 136 Morris Road in the Town of Colonie ("site"). The facility is also registered as a processing facility and is authorized to accept only recognizable uncontaminated concrete, asphalt pavement, brick, soil or rock and unadulterated wood.
4. On April 13, 2017, July 13, 2017 and October 18, 2017, Department staff inspected the site.

First Violation

5. Regulations at 6 NYCRR §360-5.3(b)(2)(iv) provide that a registered facility must be constructed and operated in compliance with the following conditions: "*the facility is at least 200 feet from the nearest surface water body, potable water well, and residence or place of business, excluding the generating business and any residence or place of*

business built after the facility began operation. This separation distance requirement may be increased to 500 feet in densely populated or otherwise sensitive areas, as determined by the department.”

6. At the time of the April 13, 2017 inspection, one windrow was measured less than the minimum 200 feet to Dominion Equipment Parts at 138 Morris Road, which is in violation of regulations at 6 NYCRR §360-5.3(b)(2)(iv).

Second and Third Violations

7. Regulations at 6 NYCRR §360 1.2(a)(175) provide that “*Unadulterated wood means wood that is not painted or treated with chemicals such as glues, preservatives or adhesives. Any painted wood or chemically treated wood (e.g., pressure treated wood, treated railroad ties) or wood containing glues or adhesives (e.g., plywood, particle board) is considered adulterated wood.*” Plywood and painted wood is not unadulterated as per 6 NYCRR §360 1.2(a)(175).

8. Regulations at 6 NYCRR §360-16.1(d)(1) provide that “*The following regulated solid waste management facilities are subject to the registration provisions of subdivision 360-1.8(h) of this Part, rather than the permit requirements of this Part, provided all the applicable requirements of this Subpart and subdivision 360-1.8(h) of this Part are met:*

(ii) a facility receiving and processing only uncontaminated and unadulterated wood.”

9. Regulations at 6 NYCRR §360-1.4(a)(1)(iv) provide that “*The owner or operator of a registered solid waste management facility shall not violate the conditions for qualification for such registration; violate any condition imposed by the department pursuant to its approval of such registration; violate any applicable operational requirement; or operate the registered activity in a manner which poses a significant adverse impact on public health, safety, or welfare, the environment or natural resources.*”

10. At the time of the April 13, 2017 inspection, both plywood and painted stockade fencing panels were observed. The plywood and painted stockade fencing material were mixed in a pile with unadulterated wood, which is in violation of regulations at 6 NYCRR §360-16.1(d)(1) and 6 NYCRR §360-1.4(a)(1)(iv).

Fourth Violation

11. Regulations at 6 NYCRR §360-1.14(d) provide that “*access to and use of the facility must be strictly and continuously controlled by fencing, gates, signs, natural barriers or other suitable means.*”

12. At the time of the April 13, 2017 inspection, there was no fencing, gates, signs, natural barriers or other means to restrict access observed during the inspection. On April 17, 2017, a Notice of Violation was issued to Respondent for not having access control to the facility. The ribbon put in place at the front of the entrance to the facility in response to that notice of violation is not considered suitable or considered to be continuous access control. Failure to properly control access to the facility is in violation of regulations at 6 NYCRR §360-1.14(d).

Fifth Violation

13. Regulations at 6 NYCRR §360-1.14(e)(1) provide that *“the facility owner or operator must institute a control program (including measures such as signs at all maintained access points indicating hours of operation and the types of solid waste accepted and not accepted, monitoring, alternate collection programs, passage of local laws, etc.) to assure that only solid waste authorized by the department to be treated, disposed of or transferred at the facility is being treated, disposed of or transferred at that facility. The facility owner or operator must develop and implement a program to teach the facility's staff to recognize, remove and report receipt of solid waste not authorized by the department to be treated, disposed of or transferred at the facility.”*

14. At the time of the April 13, 2017 and October 18, 2017 inspections, Department staff observed no control measures and as previously stated above, unauthorized waste was observed during the inspection mixed with unadulterated wood. The receipt of unauthorized waste at the facility indicates a control program is not in place in violation of regulations at 6 NYCRR §360-1.14(e)(1).

Sixth Violation

15. Regulations at 6 NYCRR §360-1.14(j) provide in part that *“Solid waste must be confined to an area that can be effectively maintained, operated and controlled”*.

16. Compost operations are authorized at 136 Morris Road under a registration obtained on September 4, 2008.

17. During the July 13, 2017 inspection, Department staff observed that compost operations had extended onto the northern end of 126 Morris Road, a site where there is no authorization for compost operations, which is in violation of regulations at §360-1.14(j).

Civil Penalty

18. 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.

Waiver of Hearing

19. 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. With respect to the aforesaid alleged violation, a civil penalty in the amount of THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) is hereby assessed against the Respondent of which SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) 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 THIRTY THOUSAND DOLLARS (\$30,000) 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 the 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 this 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: *January 24*, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order, Respondent shall remove all adulterated wood from the facility.
2. Within 7 days of the effective date of this Order, Respondent shall move all piles of unfinished material at least 200 feet away from nearest business.
3. Within 7 days of the effective date of this Order, Respondent shall implement a suitable and effective means of access control.