

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 3069

June 20, 2017

James Ferrari
P.O. Box 1047
Cooperstown, NY 13326

Re: Order on Consent
R4-2016-1101-153
Town of Edmeston

Dear Mr. Ferrari:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: R. Fetterman, ECO
G. McPherson



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law ("ECL"),
Articles 19 and 27

Order on Consent
File No. R4-2016-1101-153

-by-

Town of Edmeston
2 West Street
P.O. Box 5133
Edmeston, NY 13335

Respondent

WHEREAS:

Jurisdiction

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. 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).
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.*

Facts

4. On October 12, 2016, the Edmeston Fire Company performed its training exercise which consisted of burning debris consisting of the Ole Grange, located across from the Edmeston Fire Company, which was knocked down and the debris was relocated by the Town Highway Department for the Training Exercise. The debris was piled behind the town barn and approval was given by the board, to the fire company, to utilize the materials for the training exercise.
5. During the evening hours of October 13, 2016, Department staff observed the unattended pile burning.

6. On October 16, 2016, Department staff observed that the pile was still smoldering and giving off an obnoxious smell and odor. Upon inspection of the smoldering pile, Department staff observed mattress springs, conduit wiring, a toilet, cement blocks, bricks, remains of a piano and metal strings, and an identifiable material.
7. On October 28, 2016, Department staff determined that the distance from the place of the burn to the town barn building was approximately 83 yards.
8. Respondent did not have a permit to dispose of solid waste.

Air Quality Violations

9. Regulations at 6 NYCRR 215.2 provides 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.”*
10. Respondent violated regulations at 6 NYCRR 215.2 by burning materials in an open fire.
11. ECL 9-1105 (1)(a) prohibits the setting of fires on or near forest land and leaving such fires unattended and unquenched.
12. Respondent violated ECL 9-1105 (1)(a) by setting the fire and leaving it unattended.

Solid Waste Violations

13. Regulations at 6 NYCRR 360-1.2(a)(1) provides that *“Solid waste means, except as described in paragraph (4) of this subdivision, any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the State of New York and the government of the United States (see section 360-1.3 of this Subpart).”*
14. Regulations at 6 NYCRR 360-1.5 (a) provide 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.”*

15. Respondent violated regulations at 6 NYCRR 360-1.5 (a) by unlawfully disposing of solid waste.

16. *“Solid waste management facility means any facility employed beyond the initial solid waste collection process and managing solid waste, including but not limited to: storage areas or facilities; transfer stations; rail-haul or barge-haul facilities; landfills; disposal facilities; solid waste incinerators; refuse-derived fuel processing facilities; pyrolysis facilities; C&D debris processing facilities; land application facilities; composting facilities; surface impoundments; used oil storage, reprocessing, and rerefining facilities; recyclables handling and recovery facilities; waste tire storage facilities; and regulated medical waste treatment facilities. The term includes all structures, appurtenances, and improvements on the land used for the management or disposal of solid waste.”*

17. Regulations at 6 NYCRR 360-1.7 (a)(1)(i) provide that *“Except as provided for in subdivisions (b) and (c) of this section, section 360-1.13 of this Subpart or otherwise provided for in the applicable Subpart pertaining to the type of solid waste management facility in question, no person shall:*

(i) 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.”

18. Respondent violated regulations at 6 NYCRR 360-1.7 (a)(1)(i) by constructing and operating a solid waste management facility without a permit.

Civil Penalty

19. ECL 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.”*

20. 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

21. 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. Penalty

With respect to the aforesaid alleged violation, a civil penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) is hereby assessed against the Respondent of which ONE THOUSAND DOLLARS (\$1,000) 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 FIVE HUNDRED DOLLARS (\$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, and fugitive dust continues to leave the site, regardless of the time of year, 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.

RECEIVED
DATE
Rotter

DATED: June 20, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

RECEIVED
DATE
Rotter

RECEIVED
DATE
Rotter

CONSENT BY RESPONDENT

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

Town of Edmeston

SIGNED: Russell Dutcher

TITLE: Supervisor

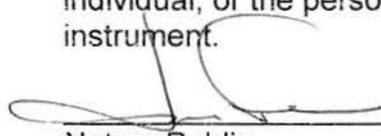
DATE: 6/6/17

STATE OF New York)

COUNTY OF Otsego)

)
)ss.:

On the 6 day of JUNE in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Russell Dutcher 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:

James Peter Ferrari
Notary Public, State of New York
Qualified in Otsego County
No. 02FE6061849
My Commission Expires July 23, 2017

STAI
COY

SCHEDULE OF COMPLIANCE

1. Within 14 days of the effective date of the Order, Respondent shall properly dispose of the burnt debris and remaining solid waste, at an authorized facility, and submit to the Department, receipts from the disposal.
2. Within 30 days of the effective date of the Order, Respondent shall send out a mailing to all residents within the district, advising of the open burning regulations. Prior to the mailing, Respondent shall submit to the Department for approval, a copy of the proposed letter. Within 45 days of the effective date of this Order, Respondent shall submit to the Department, proof of the approved mailing.