

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

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law (ECL) of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 360-13.1(f),

ORDER

DEC Case No.
LER5-14-016727

- by -

ROBERT J. BLAISE,

Respondent.

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent Robert J. Blaise on two sites¹ located in the Town of Black Brook, Clinton County, New York, violated:

- 6 NYCRR 360-13.1(b), by storing 1,000 or more waste tires at a time without first having obtained a permit for the two sites; and
- 6 NYCRR 360-13.1(f), by storing more than 1,000 waste tires for a period longer than sixty (60) days and thereby operating an unpermitted disposal facility with respect to the two sites.²

Department staff further alleged that, by storing more than 1,000 waste tires without a permit, respondent has caused the release of more than ten (10) cubic yards of solid waste into the environment (see Amended Staff Complaint dated May 9, 2017 [Hearing Exhibit 5-A, ¶ 20]).

Staff requests that I issue an order (i) holding that respondent committed the alleged violations; (ii) imposing upon respondent a civil penalty in the amount of \$10,000; and (iii) requiring the respondent to perform remedial actions relating to the tires. Specifically, staff requests that respondent reduce the number of waste tires to fewer than 1,000 “by removing tires to a landfill, facility, or destination . . . that has been permitted to accept waste tires,” and that respondent provide photographs and other documentation to the Department that demonstrates compliance (see id., at 4 [III. A.]).

¹ As discussed in the hearing report attached to this order, piles of tires were present on property on Golf Course Road and a pile of waste tires was present on property on Pettigrew Road (see Hearing Report at 9-10).

² Effective November 4, 2017, 6 NYCRR 361-6 replaced 6 NYCRR 360-13. For purposes of this order, former 6 NYCRR 360-13 applies.

Department staff also requests that I order respondent to ensure that the waste tires be transported in accordance with applicable laws and regulations, receipts be obtained from transporters and the receiving facilities with information on the tires being transported -- together with the names and addresses of the transporters and the receiving facilities, and such receipts be furnished to the Department (see id., at 5 [III. B., C. and D.]).

On July 13, 2015, respondent submitted a petition for a beneficial use determination (BUD) to the Department in order to construct a retaining wall using discarded passenger car, truck and heavy equipment tires as the “primary facing element” (see Hearing Exhibit 21 [Attachment: Tire Faced Retaining Wall, ¶ 1]). The wall was to be located at 20 Pettigrew Road (see id.; see also Hearing Report at 4 [Finding of Fact No. 13]) and, according to respondent, would address erosion on the property (see Hearing Exhibit 21 [Attachment: Tire Faced Retaining Wall, ¶ 2]). Department staff determined that respondent’s petition for the BUD was incomplete and that additional information was necessary (see Hearing Exhibit 21 [email from David Mt. Pleasant of Department staff to respondent dated July 16, 2015 noting the need for a site plan, construction specifications and a statement from a New York State registered professional engineer regarding the wall’s stability and resistance from overturning]; see also Hearing Report at 7 [Finding of Fact No. 35]). Respondent did not provide the additional information and no BUD was granted for the retaining wall construction (see Hearing Report at 7 [Finding of Fact No. 35], 11; see also Hearing Exhibit 21 [email dated May 1, 2017 from Kevin Wood of Department staff to Department attorney Scott Abrahamson]). The tires have remained at the two sites for several years (see Hearing Report at 7 [Finding of Fact No. 34], 9, 11).

Respondent was personally served with the notice of hearing and complaint. Although respondent appeared for a pre-hearing conference (see Hearing Exhibit 2), he did not serve an answer to staff’s complaint. Administrative Law Judge (ALJ) Lisa A. Wilkinson of the Department’s Office of Hearings and Mediation Services was assigned to this matter. Respondent did not appear at the May 9, 2017 hearing despite having received proper notice. At the hearing, Department staff moved for a default judgment. The ALJ concluded that Department staff was entitled to a judgment in default pursuant to 6 NYCRR 622.15 because respondent failed to answer and failed to appear at the default hearing.

Upon receipt of the hearing report and my consideration of the record, I directed, by letter dated December 4, 2017, that the hearing report be circulated as a recommended decision pursuant to 6 NYCRR 622.18(2)(ii). In that letter, I also directed three questions to respondent, as follows:

- whether respondent was still pursuing a beneficial use determination (BUD) for the use of tires on his properties for his proposed construction of a retaining wall;
- whether respondent had submitted to Department staff any additional information to address Department staff’s July 16, 2015 comments on his BUD application; and
- whether respondent had removed any tires from the properties since the commencement of Department staff’s enforcement proceeding and, if so, when did that occur and what facilities received the tires.

Respondent's comments on the hearing report and answers to the above-referenced questions were to be received by my office no later than December 15, 2017. Furthermore, I indicated that if respondent was planning to complete the BUD application process for the use of tires, the additional information required to complete the application must be submitted to Department staff in approvable form no later than December 20, 2017. Respondent has not provided any response to my December 14, 2017 letter.

Department staff was given the opportunity to respond by December 22, 2017 and did so by letter dated December 21, 2017. Department staff notes that respondent has been non-responsive in this proceeding and further discusses respondent's illegal storage of waste tires and the environmental risks arising therefrom. Department staff reports that an additional review of the Department's publicly available records confirmed that respondent has not submitted any further information or made any additional attempts to obtain a BUD for his illegally stockpiled tires.

Department staff, however, objects to my request for additional information from respondent that was contained in my December 4, 2017 letter under cover of which the hearing report was circulated pursuant to 6 NYCRR 622.18(a). Department staff's objections are lacking in merit and are rejected. It is within the authority of a Commissioner to solicit additional information to ensure a complete hearing record at any time prior to a final decision. This principle is reflected in both regulation and administrative precedent (see 6 NYCRR 622.18 [d] [prior to issuing a final decision, a Commissioner may direct that the hearing record be reopened to consider significant new evidence]; see also Matter of Montgomery, Order of the Assistant Commissioner, March 20, 2007, at 2 [Commissioner Sheehan reopening the record to allow respondent to provide additional information]; Matter of Agramonte, Decision and Order of the Acting Commissioner, July 19, 2005, at 2 [Commissioner Crotty reopening the record to allow respondents to provide additional information]).

Department staff presented its case on the merits at the May 9, 2017 hearing, calling two witnesses to testify and offering a number of exhibits, all of which were received by the ALJ into evidence. The record evidence demonstrates that respondent violated 6 NYCRR 360-13.1(b) and 360-13.1(f), and is responsible for the release of more than ten (10) cubic yards of solid waste into the environment (see Hearing Report at 7 [Finding of Fact No. 32 (staff witness testimony that respondent is storing between 3,500 and 4,000 tires, comprising approximately 400 cubic yards)]; see also Hearing Report at 11 [chart showing estimated 2,380 tires on site 1 and 1,500 tires on site 2]).

As noted, respondent has not provided the information requested and has not commented on the hearing report. Based on my review of the record, I hereby adopt the hearing report as my decision in this matter subject to the comments in this order.

Staff seeks a civil penalty of ten thousand dollars (\$10,000), which is below the maximum statutory penalty and the preliminary base penalty calculated by Department staff (see Hearing Report at 12 [referencing Department staff's penalty calculation in the context of ECL 71-2703(1)(b)(ii)]; see also Hearing Exhibit 5-A [Amended Staff Complaint], ¶ 16 [citing ECL

71-2703(1)(b)(ii)].³ I conclude that the civil penalty requested by staff in the amount of ten thousand dollars (\$10,000) is authorized and appropriate on the record before me.

I am also ordering respondent to perform certain remedial actions as requested by Department staff and recommended by the ALJ. Improper storage and disposal of waste tires present unacceptable risks of harm to the environment and public health. Department staff noted the potential risk of fire particularly in light of the location of the tires (see Hearing Report at 12). Accordingly, I am directing respondent to remove as many tires as necessary from the two sites so that the total number of tires remaining at the two sites combined is less than 1,000 tires.

With respect to the remedial actions that respondent is to undertake, respondent is required to furnish appropriate documentation to Department staff that confirms the proper transport and disposal of the waste tires. I am hereby directing that respondent provide to Department staff for its review the names and addresses of the transporters and the destination facilities at least four (4) business days prior to the commencement of transport.

Department staff at its discretion may, upon good cause shown by respondent, modify the time periods that relate to the transport and disposal of the waste tires.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear at the default hearing, respondent Robert J. Blaise waived his right to be heard at the hearing.
- II. Based upon a preponderance of record evidence presented by Department staff at hearing, respondent Robert J. Blaise is adjudged to have violated:
 - A. 6 NYCRR 360-13.1(b), by storing without a permit more than 1,000 waste tires in the Town of Black Brook, Clinton County, New York; and
 - B. 6 NYCRR 360-13.1(f), by operating without a permit or other authorization a disposal facility in the Town of Black Brook, Clinton County, New York, by storing more than 1,000 waste tires for more than 60 days.

By storing more than one thousand (1,000) waste tires without a permit, respondent Robert J. Blaise has caused the release of more than ten (10) cubic yards of solid waste into the environment.

³ The proposed order that Department staff submitted to the DEC's Office of Hearings and Mediation Services used language from ECL 71-2703(1)(a) as the authority for the civil penalty (see Hearing Exhibit 4 [internal Exhibit 4]). Based on the record of this proceeding, either paragraph of ECL 71-2703(1) authorizes the penalty being assessed here.

- III. Within thirty (30) days of service of this order upon respondent Robert J. Blaise, respondent shall reduce the total number of waste tires at the two sites combined to fewer than one thousand (1,000). The tires shall be transported in accordance with applicable laws and regulations to a landfill or other location that is permitted or otherwise authorized to accept waste tires. At least four (4) business days prior to the commencement of transport for staff's review, respondent shall provide Department staff in writing with the names and addresses of the transporters and the destination facilities.
- IV. Within ten (10) days of the removal of tires and their disposal, respondent Robert J. Blaise shall submit to the Department:
- A. Photographs and other documentation to the Department demonstrating that a sufficient number of tires have been removed so that the total number of tires at the two sites combined is less than one thousand (1,000) tires; and
- B. a written receipt from each person who transports and each facility that accepts waste tires from respondent pursuant to this order. Each such receipt shall include the tonnage or approximate number of tires in each load of tires removed and disposed, the name and address of each transporter, and the name and address of the facility receiving each load of tires.
- V. Respondent Robert J. Blaise is hereby assessed a civil penalty in the amount of ten thousand dollars (\$10,000) for the violations identified in paragraph II of this order. Within thirty (30) days of the service of this order upon respondent Robert J. Blaise, respondent shall pay the civil penalty in the amount of ten thousand dollars (\$10,000) by certified check, cashier's check or money order made payable to the "New York State Department of Environmental Conservation."
- VI. Respondent Robert J. Blaise shall send the civil penalty assessed in paragraph V of this order to the following address:

Office of General Counsel, Region 5
NYS Department of Environmental Conservation
1115 NYS Route 86, P.O. Box 296
Ray Brook, New York 12977
Attn: Scott Abrahamson, Esq.

New York State Department of Environmental Conservation
ATTN: Regional Materials Management Engineer
232 Golf Course Road
Warrensburg, New York 12885

With a copy to:

Scott Abrahamson, Esq., Assistant Regional Attorney
New York State Department of Environmental Conservation
Office of General Counsel Region 5
1115 NYS Route 86, P.O. Box 296
Ray Brook, New York 12977

Any questions or other correspondence regarding this order should be directed to the Regional Materials Management Engineer and the Assistant Regional Attorney.

- VIII. The provisions, terms and conditions of this order shall bind respondent Robert J. Blaise and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Basil Seggos
Commissioner

Dated: Albany, New York
January 2, 2018

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

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law (ECL) of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 360-13.1(f),

**HEARING
REPORT**

DEC Case No.
LER5-14-016727

- by -

ROBERT J. BLAISE,

Respondent.

PROCEEDINGS

By notice of hearing and complaint dated February 5, 2016, staff of the New York State Department of Environmental Conservation (Department staff) commenced this enforcement proceeding against respondent Robert J. Blaise for violations of the Environmental Conservation Law by storing more than 1,000 waste tires on property respondent either owned or had access to located in the Town of Black Brook, Clinton County, and for violations of the New York State Navigation Law by discharging petroleum on the same property.¹

The notice of hearing advised respondent that a written answer must be filed within twenty days of respondent's receipt of the complaint. The hearing notice also advised respondent that failure to timely answer the complaint or attend the pre-hearing conference scheduled for March 10, 2016 at the Department's offices in Warrensburg, New York, would constitute a default and a waiver of respondents' right to a hearing. Respondent appeared at the pre-hearing conference but failed to answer the complaint.

On March 2, 2017, Department staff served respondent with a notice of motion for default judgment dated February 27, 2017 (*see* Exhibit 3). The notice advised that a hearing was scheduled for April 25, 2017 at the Department's offices in Warrensburg, New York and that Department staff would seek a civil penalty in the amount of \$10,000 (Notice of Motion for Default Judgment ¶¶ 12-15). On March 22, 2017, staff mailed the statement of readiness to respondent along with a cover letter stating in large boldface type that the hearing date had been changed to May 9, 2017 at 9:30 a.m., but would still be held at the Department's Warrensburg offices (*see* Exhibit 4).

¹ The complaint states that the subject properties are located in the Town of Black Brook, Clinton County, New York. Documents in the record, including Department correspondence and Clinton County tax assessment rolls, indicate that the properties have an official mailing address of Ausable Forks, New York.

The hearing took place as scheduled on May 9, 2017 at the Department's Warrensburg offices. I presided and the Department was represented by Assistant Regional Attorney Scott Abrahamson, Esq. No one appeared on behalf of respondent.

Department staff moved during the hearing to amend its complaint to remove the cause of action under the Navigation Law, reduce the amount of civil penalty sought, and make other conforming revisions. I granted the motion to amend, and Department staff submitted an amended complaint on May 15, 2017 to the Office of Hearings and Mediation Services. The amended complaint alleges that respondent stored more than 1,000 waste tires on his lands or lands of another person for more than 60 days in violation of 6 NYCRR 360-13.1(b); operated a solid waste disposal facility without a permit in violation of 6 NYCRR 360-13.1(f); and released more than 10 yards of solid waste into the environment (*see* ECL 71-2703[1][b][ii]).

The amended complaint seeks an order: (1) finding that respondent committed the violations alleged in the complaint; (2) assessing a civil penalty against respondent in the amount of \$10,000; and (3) directing respondent to remove waste tires from his property and the waste tires he placed on the property of others to bring the total number of tires stored to less than 1,000. Department staff requests that respondent be required to transport and dispose of the waste tires in accordance with applicable laws and regulations.

Department staff thereafter moved for a default judgment pursuant to 6 NYCRR 622.15 and elected to proceed with a hearing in respondent's absence. Department staff called two witnesses: Environmental Conservation Officer (ECO) Christopher M. Lagree, Office of Public Protection, Region 5; and Kevin Wood, P.E., Environmental Engineer 2, Division of Materials Management (DMM), Region 5. Department staff offered 27 exhibits, all of which were received in evidence. A chart of those exhibits is attached to this report. The hearing recording consisting of three audio files that were copied onto two CDs is included in the file for this matter (Hearing Record).

As set forth below, this report recommends that the Commissioner issue an order granting Department staff's motion for a default judgment, and holding that, based upon a preponderance of the evidence adduced at the May 9, 2017 hearing, respondent is liable for violating 6 NYCRR 360-13.1(b) and 6 NYCRR 360-13.1(f), imposing a civil penalty in the amount of \$10,000, and requiring respondent to remove and properly dispose of the waste tires.

FINDINGS OF FACT

The following findings of fact are found based upon the preponderance of record evidence presented at the hearing (*see* 6 NYCRR 622.11[c]).

Background

1. On September 25, 2014, the Department's Office of Public Protection received a complaint that respondent Robert Blaise might be burying waste tires on his property located on Pettigrew Road (*see* Exhibit 7). The complaint was assigned to Environmental Conservation Officer (ECO) Christopher M. Lagree who responded to Mr. Blaise's

property at 20 Pettigrew Road, Ausable Forks, New York, Clinton County. ECO Lagree has worked for the Department since 2007. (*See* Testimony of ECO Lagree.)

2. ECO Lagree has previously dealt with piles of waste tires in excess of 1,000 in number, and estimated that more than 1,000 waste tires were being stored on respondent's property. He issued respondent a notice of violation (NOV) for storing more than 1,000 waste tires without a permit, returnable on April 2, 2015 to Lieutenant Ellithorpe (*see* Exhibit 9). Respondent advised ECO Lagree that he planned to build a retaining wall with the waste tires and had asked DEC how to obtain a permit. ECO Lagree advised respondent to contact Lieutenant Ellithorpe. (*See* Testimony of ECO Lagree; Exhibit 7 [call for service], Exhibit 8 [marking waste tire pile], and Exhibit 9 [NOV].)
3. On February 20, 2016, ECO Lagree personally served the notice of hearing and complaint dated February 5, 2016 on respondent Robert J. Blaise (*see* Exhibit 1, Affidavit of Service of ECO Christopher Lagree sworn to March 1, 2016).
4. The notice of hearing advised respondent that failure to serve a written answer on the Department within 20 days of the receipt of the notice of hearing and complaint, or appear at the pre-hearing conference scheduled for March 10, 2016, would constitute a default and waiver of respondent's right to a hearing (*see* Exhibit 1).
5. Respondent failed to answer the complaint (*see* Hearing Record).
6. On December 1, 2016, Assistant Regional Attorney Scott Abrahamson mailed a demand for an answer to respondent by certified mail to the following address: Mr. Robert J. Blaise, 20 Pettigrew Road, Ausable Forks, New York 12912 (*see* Exhibit 2). The mailing was returned marked "unclaimed."
7. On March 2, 2017, ECO Lagree personally served respondent with a notice of motion for default judgment at his residence at 20 Pettigrew Road, Ausable Forks, New York 12912 (*see* Exhibit 3; *see also* Testimony of ECO Lagree).
8. On March 22, 2017, Renee Fitzgerald mailed two statements of readiness for adjudicatory hearing and cover letters signed by Assistant Regional Attorney Scott Abrahamson, all dated March 22, 2017, to Mr. Robert Blaise, 20 Pettigrew Road, Ausable Forks, New York 12912. One envelope was mailed by certified mail, return receipt requested. The return receipt was returned to the Department acknowledging receipt of the mailing on March 25, 2017. The second envelope was mailed by first class mail and was not returned. The statement of readiness included a letter with very prominent, bold font that notified respondent of the change in the hearing date to May 9, 2017. (*See* Exhibit 4, Affidavit of Service of Renee Fitzgerald sworn to March 22, 2017.)
9. On April 21, 2017, ECO Lagree went to respondent's residence on Pettigrew Road to advise him that the Department had scheduled a hearing in this matter on May 9, 2017 and that Department staff would be conducting an inspection on April 25, 2017.

Respondent advised ECO Lagree that he was not coming to the hearing. (*See* Testimony of ECO Lagree.)

The April 25, 2017 Site Inspection

10. Department staff conducted a site inspection on April 25, 2017. ECO Lagree, Brian Huyck, Region 5 Enforcement Coordinator, and Kevin Wood, Environmental Engineer 2 in the Division of Materials Management, Region 5, participated in the inspection on behalf of Department staff. Respondent was present during the inspection. The purpose of the site inspection was to document the number of tires respondent was storing. (*See* Testimony of Kevin Wood and Testimony of ECO Lagree.)
11. The site inspection encompassed property located on Golf Course Road in Ausable Forks in the Town of Black Brook, New York, which is owned by Robert Blaise; property located at 20 Pettigrew Road which is owned by Robert and Pamela Blaise; and property just beyond 20 Pettigrew Road at the end of the right-of-way, the ownership of which was not established at the hearing. These areas are depicted in Exhibits 11 and 20 and in photographs 12-18. (*See* Testimony of ECO Lagree and Testimony of Kevin Wood.)
12. During the site inspection, Department staff observed two additional waste tire piles near the pile that ECO Lagree had observed during his March 2015 site visit. The location of the three waste tire piles is marked as site 1 on Exhibit 11. Staff also discovered a fourth waste tire pile at a location down Pettigrew Road and designated that pile on Exhibit 11 as site 2. (*See* Testimony of ECO Lagree, Testimony of Kevin Wood; Exhibits 8, 11, and 20.) These tire piles are also documented in the photographs taken by Kevin Wood during the inspection (*see* Exhibits 12-18).
13. Respondent accompanied DEC staff during the entire inspection. He showed Department staff the waste tire piles and spoke with staff during the inspection. Respondent stated that he wanted to use the waste tires to build a retaining wall at 20 Pettigrew Road. The Department had determined that the Beneficial Use Determination (BUD) petition he had submitted was not adequate. Respondent estimated he needed 10,000 tires to build the wall, more than he currently had. (*See* Testimony of ECO Lagree, Testimony of Kevin Wood; Exhibit 21.)

Property Ownership and Description

14. Assistant Regional Attorney Scott Abrahamson obtained real property deeds from the centralized database maintained for public use by the Clinton County Clerk's Office and the Clinton County Property Description Reports and Tax Assessment Rolls for the taxable years 2014-2015 and 2015-2016. These public documents establish the ownership and descriptions of the property owned by Robert Blaise (Clinton County tax map parcel 333.-2.4.76), Robert and Pamela Blaise (Clinton County tax map parcel 333.-2-4.6), and Betty Blaise (Clinton County tax map parcel 333.-2-4.83) (*See* Hearing Record discussion by Scott Abrahamson; Exhibit 23 [exhibits 1, 2, and 3].)

15. Site 1 is located on Golf Course Road in Ausable Forks, New York. It is identified in Clinton County real property records as tax map parcel 333.-2-4.76² and is owned by Robert Blaise (*see* Hearing Record discussion by Scott Abrahamson and Exhibits 11 and 23 [exhibit 1]). Site 1 includes three distinct piles of waste tires, depicted on Exhibit 20 as piles 1, 2 and 3 (*see* Testimony of Kevin Wood; Exhibit 20).
16. Based on the property boundaries depicted in Exhibits 8 and 11, and the testimony of ECO Lagree and Kevin Wood, all of the tires in tire pile 3 are located wholly on the Golf Course Road property owned by respondent. All or a substantial majority of the tires in piles 1 and 2 are located on the Golf Course Road property owned by respondent. (*See* Testimony of ECO Lagree, Testimony of Kevin Wood and Exhibits 8 and 11.)
17. Across from the Golf Course Road property is property located at 20 Pettigrew Road, Ausable Forks, New York where respondent resides. This property is identified in Town of Black Brook, Clinton County tax records as tax map parcel 333.-2-4.6 and was deeded from Betty Blaise to Robert and Pamela Blaise, the current owners, on July 21, 1993. (*See* Hearing Record discussion by Scott Abrahamson and Exhibits 11 and 23.)
18. Adjoining 20 Pettigrew Road is property located at 29/33 Pettigrew Road, identified on Clinton County tax records as tax map parcel 333.-2-4.83. This property is owned by Betty Blaise, the grantor of 20 Pettigrew Road. Tax related correspondence for this property is directed to Robert Blaise at 20 Pettigrew Road. (*See* Hearing Record discussion by Scott Abrahamson, Exhibit 11 and Exhibit 23 [exhibit 3].)
19. Site 2, the site of the fourth pile of waste tires found by Department staff, is located outside the property boundary of Betty Blaise's property at 29/33 Pettigrew Road, at the end of the Pettigrew Road right-of-way. The tires on site 2 are located adjacent or closely proximate to 29/33 Pettigrew Road. (*See* Exhibit 11.)

Waste Tires

20. Kevin Wood has worked for the Department for 23 years. Mr. Wood received a bachelor's degree in civil and environmental engineering from Clarkson University in 1993. His duties include making sure solid waste management facilities are constructed in compliance with the Department's regulations, inspecting solid waste facilities, and participating in enforcement actions. Mr. Wood has at least 15 years of experience estimating the number of tires in waste tire stockpiles and has participated in the Department's waste tire abatement initiative to address large piles of waste tires in Region 5. (*See* Testimony of Kevin Wood.)
21. Mr. Wood photographed the waste tire piles with a Department-issued camera (*see* Exhibits 12-18 and 20 [waste tire piles 1, 2, and 3]). The center of the photograph

² The amended complaint identifies the tax map parcel number as 333.-2-4.75. This is a typographical error. The Clinton County records entered into evidence by Department staff establish that the correct tax map parcel number is 333.-2-4.76.

marked as Exhibit 12 is the face of waste tire pile 2 on site 1. To the left of that pile, behind the embankment, is waste tire pile 3 on site 1. (*See Testimony of Kevin Wood.*)

22. Mr. Wood took the photograph marked as Exhibit 13 standing on the path between waste tire piles 1 and 2. The photograph primarily shows waste tire pile 2 on site 1. Mr. Wood observed that the waste tires in these piles were covered in dirt and mud and haphazardly thrown into piles. Some of the tires had trees growing through them, indicating the tires had been stored for a period of time longer than 60 days. Mr. Blaise told Department staff that the tires had been there 8 or 9 years. (*See Testimony of Kevin Wood.*)
23. Mr. Wood took the photograph marked as Exhibit 14 looking at pile 2 on site 1 from the north side. The vast majority of the tires in this pile are small passenger car tires. (*See Testimony of Kevin Wood.*)
24. Mr. Wood took the photograph marked as Exhibit 15 from pile 1 on site 1 at the same location as the photograph in Exhibit 14 but from a different direction. Pile 1 is smaller than pile 2 and tires are haphazardly thrown into the pile. Trees and brush are growing through and around the tires, against the tree line adjacent to pile 2. (*See Testimony of Kevin Wood.*)
25. Mr. Wood took the photograph marked as Exhibit 16 on site 1 along the dirt path heading toward the camper depicted in Exhibits 12 and 13. The photograph shows pile 3 on site 1. The condition of the tires at pile 3 is consistent with the other waste tire piles, with old mud and stains and the haphazard placement of tires. The tires are primarily from passenger vehicles and light trucks. (*See Testimony of Kevin Wood.*)
26. Mr. Wood took the photograph marked as Exhibit 17 on site 2 toward the end of the road right-of-way at the end of the driveway, past the houses and trailers in the tree line. The photograph depicts tire pile 4, which is located in the woods along the tree line. These tires are moss covered with pine needles and debris on the tires, indicating they have been there for more than 60 days. (*See Testimony of Kevin Wood.*)
27. Mr. Wood took the photograph marked as Exhibit 18 from Pettigrew Road at the location of the house trailer looking back into the woods at pile 4. (*See Testimony of Kevin Wood.*)
28. Exhibit 20 is a GOOGLE Earth image dated September 8, 2014 downloaded by Kevin Wood. Exhibit 20 is an accurate representation of what Mr. Wood observed during his site visit and shows the three tire piles associated with site 1. The tire piles are located in the same place and exhibit the same characteristics as Mr. Wood observed during his site inspection. As compared to the photographs in Exhibits 12-18, Exhibit 20 was taken in September when there was more vegetation. (*See Testimony of Kevin Wood.*)

Calculating the Quantity of Waste Tires at the Site

29. For at least 15 years, the Department has calculated the number of tires in a waste tire pile by using a volumetric estimation methodology developed by the State of California. The methodology takes into account the shape of the waste tire pile, the composition of the tire pile, the type of tires in the pile, and the size of the pile. Conversion factors are applied to determine the value based on the characteristics of the pile (*i.e.*, pile height and how the tires are stacked or placed in the pile). (*See* Testimony of Kevin Wood; Exhibits 19, 19-A, and 19-B.)
30. The tire counting methodology enables the Department to estimate the number of waste tires in a pile without having to count each tire. The Department utilized this methodology in a recent waste tire abatement initiative and conducted comparative studies of the estimate of tires derived from the methodology versus the actual number of tires counted for landfill disposal. (*See* Testimony of Kevin Wood.) The Department found that the methodology, which called for the application of 20% reduction factor in the predicted estimate of waste tires, resulted in a significant underestimation of the number of waste tires. Based on this experience, the Department stopped applying the 20% reduction factor. (*See* Testimony of Kevin Wood.)
31. Tire piles 1, 2 and 4 have an elliptical shape. Mr. Wood utilized a measuring wheel to determine the length and width of the tire piles and estimated the height of the piles by standing next to the pile or looking at something of a known height. The piles were ten feet or less. (*See* Testimony of Kevin Wood; Exhibits 19, 19-A, and 19-B.)
32. Mr. Wood estimated that pile 1 contained 380 tires; pile 2 contained 1,900 tires; and pile 3 contained 1,500 tires. He counted 100 tires in pile 3. He broadly estimated the number of tires in all four piles to be between 3,500 and 4,000, about 400 cubic yards. (*See* Testimony of Kevin Wood; Exhibits 19, 19-A, and 19-B.)
33. Department staff rely on GOOGLE Earth to perform their field work and provide images that can be field verified. (*See* Testimony of Kevin Wood.)
34. Based on Exhibit 20 and testimonial evidence provided by Kevin Wood and ECO Lagree, the waste tires in piles 1, 2, and 3 on site 1 have been there for more than three years.

Status of DEC Approvals

35. On July 13, 2015, Mr. Blaise submitted a BUD petition to the Department to build a retaining wall at 20 Pettigrew Road. Department staff deemed the petition incomplete. Mr. Blaise did not complete the petition, and the Department did not grant a BUD for the retaining wall project (*see* Testimony of Kevin Wood; Exhibit 21).
36. Rebecca A. Smith, an Environmental Analyst in the Division of Environmental Permits Region 5, searched the Department's DART database and the Department's paper files

and failed to find a permit application for the storage of waste tires at the following addresses: 20 Pettigrew Road, Ausable Forks, New York 12912; Robert J. Blaise, Golf Course Road, Ausable Forks, New York 12912; 29/33 Pettigrew Road, Ausable Forks, New York 12912; and any records for Pamela Blaise or Betty Blaise. Nor did Ms. Smith find any permit files associated with tax map numbers 333.-2-4.76; 333.-2-4.6; and 333.-2-4.83. (*See* Exhibit 22, Affidavit of Rebecca A. Smith sworn to May 4, 2017.)

37. Respondent does not have a Part 360 permit or other authorization to store tires at the properties located on Golf Course Road or Pettigrew Road (*see* Exhibit 22).

DISCUSSION

Default Judgment

A respondent must serve an answer on Department staff within twenty days of receiving a complaint (*see* 6 NYCRR 622.4[a]). The failure of a respondent to timely serve an answer or attend a scheduled pre-hearing conference constitutes a default and a waiver of respondent's right to a hearing, and entitles Department staff to move for a default judgment (6 NYCRR 622.15[a]). Department staff's motion for a default judgment must include proof of service of the notice of hearing and complaint, proof of respondent's failure to appear or file a timely answer, and a proposed order (6 NYCRR 622.15[b]). In addition, staff must serve the motion papers upon a respondent or respondent's representative (*see Matter of Dudley*, Decision and Order of the Commissioner, July 24, 2009).

Here, Department staff has satisfied the requirements of 6 NYCRR 622.15(b) by providing proof of service of the notice of hearing and complaint upon respondent Robert J. Blaise by personal service on February 16, 2016 (*see* Testimony of ECO Lagree; Findings of Fact No. 3; Hearing Record); proof of respondent's failure to answer the complaint (*see* Hearing Record); and a proposed order (*see* Hearing Record; Exhibit 3). The hearing record also demonstrates that Department staff served a copy of the notice of motion for default judgment on respondent by personal service consistent with the Commissioner's directive in *Dudley, supra* (*see* Findings of Fact No. 7), and that respondent failed to appear at the default hearing held on May 9, 2017 (*see* Hearing Record).

Department staff made an oral motion for default judgment at the hearing and also sought judgment on the merits. Department staff provided testimony and evidence in support of its motion and the allegations in the complaint. As such, the testimony and evidence "may be examined to confirm the factual allegations of the complaint or to otherwise assure the reviewer that the Department has a meritorious claim against the respondent (*see e.g. Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633, 635-636 [1976])" (*Matter of Hunt*, Decision and Order of the Commissioner, July 25, 2006 at 7).

A defaulting respondent is deemed to have admitted the factual allegations of the complaint (*see Matter of Hunt*, at 3-4). Department staff, however, must provide some proof of facts sufficient to support the causes of action pleaded in the complaint (*see Matter of Queen*

City Recycle Center, at 3) and, in the case of an adjudicatory hearing, must establish factual matters by a preponderance of the evidence (6 NYCRR 622.11[c]). As discussed below, staff has presented sufficient proof to establish its entitlement to a default judgment. In addition, the record demonstrates by a preponderance of evidence respondent's liability for the violations of 6 NYCRR part 360 alleged in the amended complaint.

Staff's Motion to Amend Complaint

At the hearing, Mr. Abrahamson moved to amend staff's complaint to eliminate the second cause of action alleging a violation of the Navigation Law, reduce the scope of remedial actions sought in connection with the removal of the waste tires, and reduce the civil penalty from \$20,000 to \$10,000. I granted staff's motion. On May 15, 2017, Mr. Abrahamson submitted an amended complaint to the Office of Hearings and Mediation Services. (*See* Exhibit 5A and Hearing Record.)

Part 360 Violations

A waste tire is any solid waste that consists of whole tires or portions of tires (6 NYCRR 360-1.2[b][183]). Department regulations state that "[n]o person shall engage in storing 1,000 or more waste tires at a time without first having obtained a permit to do so pursuant to this Part" (6 NYCRR 360-13.1[b]). Pursuant to 6 NYCRR 360-13.1(f), "[a] facility storing more than 1,000 waste tires for longer than 60 days shall be considered a disposal facility in violation of this Part" unless the facility has a permit, is under a consent order, or is otherwise exempt.

The Department first received a complaint in September 2014 that respondent might be storing waste tires (*see* Exhibit 7). The complaint was assigned to ECO Lagree, who visited respondent's property on Golf Course Road in Ausable Forks, New York in March 2015 and observed a stockpile of waste tires (*see* Exhibit 8, Clinton County tax map parcel 333.-2.4-76). ECO Lagree testified that he had experience in dealing with waste tire stockpiles and could tell that more than 1,000 waste tires were being stored on the Golf Course Road property. ECO Lagree marked the location of the pile on Exhibit 8. ECO Lagree issued respondent an NOV that was returnable to Lieutenant Ellithorpe on April 2, 2015. (*See* Testimony of ECO Lagree; Exhibits 8 and 9.)

Department staff subsequently discovered two additional waste tire piles at the Golf Course Road property during a site inspection on April 25, 2017. In addition, staff observed a fourth waste tire pile on Pettigrew Road adjacent to 29/33 Pettigrew Road, property owned by Betty Blaise that adjoined respondent's residence at 20 Pettigrew Road. (*See* Testimony of ECO Lagree; Exhibits 8 and 11.)

Respondent was present during ECO Lagree's initial site visit and discussed part 360 requirements with Division of Law Enforcement staff and DMM staff prior to staff filing its complaint (*see* Testimony of ECO Lagree and Testimony of Kevin Wood). Respondent was also present during staff's inspection of respondent's property on Golf Course Road and the Pettigrew Road property designated as site 2 where waste tire pile 4 was found in April 2017 (*see* Exhibit

11). Respondent freely interacted with Department staff during the inspection, accompanied staff to each of the tire piles on sites 1 and 2, and advised staff he wanted to use the waste tires to build a retaining wall. According to ECO Lagree, respondent talked extensively of his trucks, and ECO Lagree observed a truck and trailer, alone and together, on respondent's property. (*See* Testimony of ECO Lagree and Testimony of Kevin Wood; *see also* Exhibit 21.)

The property boundaries depicted on Exhibits 8 and 11 showing the locations of the tire piles are drawn from digital data of tax map parcels maintained by Clinton County. Based on this data, the photographs depicted in Exhibits 12, 13, 14, 15, 16, and 17 showing waste tire piles 1, 2, and 3 at site 1, as well as the testimony of ECO Lagree and Kevin Wood, it is clear that the waste tires on site 1 are substantially, if not wholly, on tax map parcel 333.-2-4.76, owned by respondent (*see* Exhibit 11). A reasonable inference can be made from the evidence that if any tires are on the property adjoining tax map parcel 333.-2-4.76, the tires were placed there by respondent and exist along the property line of tax map parcels 333.-1-4.76 and 333.-2-4.6 or just inside the boundary (*see* Exhibit 11).

A reasonable inference can also be made that Robert Blaise placed and continues to store a waste tire stockpile on site 2. Staff did not present evidence as to the ownership of site 2. As discussed above, however, respondent accompanied Department staff to site 2 during staff's April 25, 2017 inspection and advised staff that he planned to build a retaining wall on his property and needed to accumulate 10,000 waste tires for that purpose (*see* Testimony of ECO Lagree and Testimony of Kevin Wood; Exhibit 21). Site 2 is located at the end of the Pettigrew Road right-of-way, less than a quarter mile from site 1, and is adjacent to property owned by Betty Blaise, tax map parcel 333.-2-4.83. Robert Blaise is the designated contact for Betty Blaise's property, which also adjoins 20 Pettigrew Road where Robert Blaise resides (*see* Exhibit 23). Based on the hearing record, a reasonable inference can be made that Robert Blaise placed and has stored the waste tires on site 2.

Kevin Wood, an Environmental Engineer 2 in DMM with at least 15 years of experience estimating the number of tires in waste tire stockpiles for the Department, credibly testified that he estimated the number of waste tires in piles 1, 2 and 4 in accordance with a methodology that has been long been utilized by the Department, and which the Department has found to yield an accurate, if conservative, estimate. Mr. Wood counted the number of waste tires in pile 3. In all, Mr. Wood estimated the total number of waste tires stored by respondent to be between 3,500 and 4,000 tires and that the volume of the tires stored exceeds 400 cubic yards. (*see* Findings of Fact No. 32). The number of waste tires at each site, per pile, is set forth in the table below. Based on the record evidence, staff has established that respondent was storing more than 1,000 waste tires on Golf Course Road and Pettigrew Roads in violation of 6 NYCRR 360-13.1(b). (*See* Testimony of Kevin Wood; Exhibits 19, 19-A, and 19-B.)

Table -1 Estimate of Waste Tires

SITE	PILE	NUMBER OF WASTE TIRES	ESTIMATED OR COUNTED
1	1	380	Estimated
1	2	1,900	Estimated
1	3	100	Counted
2	4	1,500	Estimated
TOTAL		3,880	

A reasonable inference can also be made from the record evidence that Robert Blaise has stored the waste tires on site 1 and site 2 for more than 60 days in violation of 6 NYCRR 360-13.1(f). Mr. Wood testified that the waste tires are covered in dirt and mud, have rust and dirt stains on them, have trees and vegetation growing through them, and are haphazardly thrown into piles, all evidence that the tires have been stored for more than 60 days. The condition of the tires is readily apparent from the photographs Mr. Wood took during his inspection. Mr. Wood also testified that a GOOGLE Earth image taken in September 2014 shows the waste tire piles he observed on site 1 during his April 2015 inspection and shows the tires to be in the same condition that he observed during his site inspection. Mr. Wood frequently uses GOOGLE Earth images to assist with his field work and verify field conditions. Finally, Mr. Wood testified that Mr. Blaise told him the tires had been there for eight or nine years. (*See* Testimony of Kevin Wood; Exhibits 12-18, 20.)

In accordance with 6 NYCRR 360-13.1(f), respondent must have a permit or other authorization from the Department to store 1,000 or more waste tires for more than 60 days. The hearing record, however, establishes that respondent had no Department permit or other authorization related to waste tire storage or disposal. Region 5 Environmental Analyst Rebecca A. Smith submitted an affidavit that she searched the Department’s DART database and the Department’s paper files and failed to find records authorizing waste tire disposal at property on Golf Course Road or 20 Pettigrew Road in Ausable Forks, New York owned by Robert Blaise; property associated with tax map numbers 333.-2-4.76; 333.-2-4.6; and 333.-2-4.83; or any property owned by Pamela or Betty Blaise (*see* Exhibit 22; Findings of Fact Nos. 36, 37).

Likewise, respondent did not have a BUD to dispose of the waste tires. On July 13, 2015, respondent submitted a petition to the Department for a BUD to build a retaining wall comprised of 10,000 waste tires. Region 5 DMM staff provided comments to respondent via email on July 16, 2015 and requested additional site information, specifications as to how the retaining wall would be constructed, and a certification from a professional engineer that the retaining wall would be stable. Respondent never provided this information to the Department. Consequently, staff took no further action on the petition. (*See* Testimony of Kevin Wood; Exhibit 21 [email correspondence between David Mt. Pleasant and Robert Blaise] and Exhibit 22 [Affidavit of Rebecca A. Smith].)

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint and failed to appear for the default hearing scheduled in the matter on May 9, 2017, as directed in a March 22, 2017 letter from Scott Abrahamson; and (iii) Department staff has submitted a proposed order (*see* Exhibit 4; Findings of Fact Nos. 8 and 9)). The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15 on the part 360 violations alleged in the complaint.

In addition, the proof adduced at the hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent committed the violations alleged in the complaint (*see Matter of Steck*, Order of the Commissioner, March 29, 1993, at 4). Specifically, respondent stored more than 1,000 waste tires on property in Ausable Forks, Town of Black Brook, Clinton County, New York without a permit in violation of 6 NYCRR 360-13.1(b) and by doing so engaged in the illegal operation of a solid waste disposal facility in violation of 6 NYCRR 360-13.1(f) (*see Matter of Queen City Recycle Center*, at 3).

Civil Penalty and Other Requested Relief

“Any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 3 or 7 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, . . . and thereby causes the release of more than ten cubic yards of solid waste into the environment, shall be liable for a civil penalty not to exceed twenty-two thousand five hundred dollars for each such violation and an additional penalty of not more than twenty-two thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard” (ECL 71-2703[1][b][ii]).

Department staff seeks a penalty of \$10,000 (*see* Amended Complaint at 4, ¶ 21, and Wherefore Clause ¶ II). Staff first calculated a base statutory penalty of \$45,000, consisting of \$22,500 for the release of more than ten cubic yards of waste tires into the environment and \$22,500 for the continuation of the violation for more than 60 days (*see* ECL 71-2703[1][b][ii]). Staff then applied the Office of General Counsel (OGC) 8, Solid Waste Enforcement Policy (last revised December 9, 2015) and the Department's Civil Penalty Policy, DEE-1 (June 20, 1990) to arrive at a preliminary civil penalty.

Mr. Wood testified that waste tires pose significant risks to the environment and human health. Foremost, waste tires are susceptible to catching fire. Tire fires can be difficult to extinguish, can generate toxic dense black smoke, and can produce contaminated stormwater run-off that can harm water supplies and must be addressed. Serious tire fires require evacuations of people from affected areas. Region 5 has experienced several significant tire fires in recent years, including a fire that required people to be evacuated. The waste tires at issue in this proceeding are located in the brush, in dry, dead grass, and the woods, in close proximity to residences. Mr. Wood testified that if tire pile 4 caught fire, the woods could also catch on fire, leading to evacuations of residents. Tires also hold significant amounts of water and become a breeding ground for mosquitos. (*See* Testimony of Kevin Wood.)

Mr. Wood assessed the potential risk for fires in this proceeding as moderate because although several thousand tires could catch fire, the number of tires is less than some of the other tire piles in Region 5. Tires were released into the environment, but have not impacted water quality and are not in a landfill. Mr. Wood also determined the deviation from the regulatory scheme to be moderate. The violation has been ongoing for several years and Mr. Blaise has not been cooperative. Department staff has advised Mr. Blaise of haulers he could use and outlets where he could bring the tires for disposal, to no avail. (*See* Testimony of Kevin Wood.)

Mr. Wood also addressed the economic benefit component of the Civil Penalty Policy. In terms of economic benefit, Mr. Blaise may have realized income from taking waste tires as people usually pay to dispose of them and at the same time has avoided paying fees to properly dispose of the tires. Disposal fees for waste tires can range from \$1.50 to \$2.00 per tire. If Mr. Blaise had to apply for a permit, he would need to hire a professional engineer to develop a site plan specifying pile locations, pile sizes, adequate fire breaks, a fire protection system and site drainage, which he would have to implement. Mr. Wood testified that he applied a 45% multiplier to the maximum statutory penalty based on his analysis and arrived at a penalty of approximately \$20,500 for the part 360 violations.

In its original complaint, staff sought a civil penalty of \$20,000 for two causes of action. At the hearing, staff moved to amend the complaint to withdraw the second cause of action, which related to alleged violations of the Navigation Law, and reduced the civil penalty sought to \$10,000. Based on the foregoing, staff's requested penalty of \$10,000 is reasonable and amply supported by the record.

I also find support in the record for the remedial actions requested by staff and recommend that the Commissioner issue an order requiring respondent to remove the waste tires to bring the total number of tires stored to less than 1,000, transport the waste tires in accordance with applicable laws and regulations to a landfill, facility or other destination that is permitted to accept waste tires, and provide documentation to the Department from the person or persons who transports or accepts the waste tires from respondent in accordance with terms set forth in the Commissioner's Order.

CONCLUSION

Staff has demonstrated its entitlement to a judgment of default against respondent, and has proven by a preponderance of evidence that respondent has stored and continues to store more than 1,000 waste tires for more than 60 days without a Department permit or BUD in violation of 6 NYCRR 360-13.1(b) and is operating a solid waste disposal facility without a permit in violation of 6 NYCRR 360-13.1(f). The civil penalty and remedial actions sought by staff are supported by the hearing record and consistent with the ECL and the Department's penalty policies.

RECOMMENDATIONS

Based upon the foregoing, the Commissioner should issue an order:

1. Granting Department staff's motion for default, and finding respondent in default pursuant to the provisions of 6 NYCRR 622.15;
2. Holding respondent in violation of 6 NYCRR 360-13.1(b) for storing more than 1,000 waste tires without a permit or other authorization;
3. Holding respondent in violation of 6 NYCRR 360-13.1(f) for operating a disposal facility by storing more than 1,000 waste tires longer than 60 days without a permit;
4. Directing respondent to pay a civil penalty of ten thousand dollars (\$10,000); and
5. Directing respondent to conduct the remedial action requested by Department staff.

/s/

Lisa A. Wilkinson
Administrative Law Judge

Dated: June 1, 2017
Albany, New York

EXHIBIT CHART

Matter of Robert J. Blaise

DEC Case No. LER5-14-016727 May 9, 2017

Edirol Nos.: 031017070251; 031017070753; 03107100741

Exhibit No.	Description	ID'd?	Rec'd?
1	Affidavit of Service of Staff's Notice of Hearing and Complaint	✓	✓
2	Staff's Demand to Respondent for Answer, dated December 1, 2016	✓	✓
3	Affidavit of Service attaching Staff's Notice of Motion for Default Judgment	✓	✓
4	Affidavit of Service attaching Staff's Statement of Readiness for Adjudicatory Enforcement Hearing	✓	✓
5 5-A	Proposed Amended Staff Complaint Amended Complaint (clean copy)	✓ ✓	✓ ✓

Exhibit No.	Description	ID'd?	Rec'd?
6 6-A	Map of Area Scott Abrahamson Affirmation re: Map	✓	✓
7	Office of Public Protection Call for Service #14-016727	✓	✓
8	GIS- based Tax Map of Relevant Areas for Mark Up by ECO Lagree	✓	✓
9	Notice of Violation	✓	✓
10	Simplified Information/Complaint	✓	✓
11	GIS- based Tax Map of Relevant Areas for Mark Up by Kevin Wood	✓	✓
12	Photo: Arrival on April 25, 2017	✓	✓
13	Photo: Site # 1	✓	✓
14	Photo: Site # 1	✓	✓

Exhibit No.	Description	ID'd?	Rec'd?
15	Photo: Site # 1	✓	✓
16	Photo: Site # 2	✓	✓
17	Photo: Site # 2	✓	✓
18	Photo: Site # 2	✓	✓
19	Waste Tire Math Reference, October 15, 2015	✓	✓
19-A	Kevin Wood Tire Pile Calculation Diagram	✓	✓
19-B	Kevin Wood Tire Pile Calculations	✓	✓
20	Aerial of Blaise Property Based on 2014 Data	✓	✓
21	Beneficial Use Determination (BUD) Request from Robert Blaise and DEC Response	✓	✓

Exhibit No.	Description	ID'd?	Rec'd?
22	Affidavit of DEC Environmental Analyst 1 Rebecca Smith re: Waste Tire Permit	✓	✓
23	Affidavit of Scott Abrahamson re: Real Property Ownership	✓	✓

All exhibits received into evidence