

July 18, 2008

Via Fed Ex # 7920 8619 8512

Thomas J. Killian, P.E.  
New York State Department of Environmental Conservation  
Division of Solid and Hazardous Materials  
625 Broadway, 9<sup>th</sup> Floor  
Albany, New York 12233-7251

**Re: Consent Order: Case No: CO 3-20080618-44 Revere Smelting & Refining Corporation, Middletown, New York**

Dear Mr. Killian:

Enclosed is a certified check for \$6,000 for consent order case number CO3-20080618-44.

The drums in question were removed from the facility on 4/14/2008. This brings us into compliance with the requirements of the Part 373 Permit and the regulations cited in subparagraph (5). Also a new procedure was initiated to check all drums for the proper dates in order to ensure compliance.

If you have any questions concerning the above information please feel free to contact me at (914) 692-4414 ext. 25.

  
Jim Walsh  
*EH & S Compliance Manager*

Mr. More  
New York State Department of Environmental Conservation  
Region III  
21 South Putt Corners Road  
New Paltz, NY 12561

Via Fed Ex # 7989 8135 6887

cc: Michael Sirbaugh – Revere Smelting & Refining  
Therese Cirone – RSR Corporation

REVERE SMELTING AND REFINING CORPORATION 1293

10607

GENERAL ACCOUNT  
65 BALLARD RD  
MIDDLETOWN, NY 10941  
(845) 692-4114

DATE July 18, 08 50-247-219

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ORANGE COUNTY  
**RUST**  
Company

Hudson • Montgomery • Vails Gate, NY

*Orange County Rust Company*

*W. J. ...*

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

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In the Matter of the Alleged Violations of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("6 NYCRR")  
by:

**REVERE SMELTING AND REFINING, CORP.**

**NOTICE OF HEARING**

Respondent

Case No.: CO 3-20080618-44

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PLEASE TAKE NOTICE that pursuant to Title 6, Part 622 (revised January, 1994) of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), the Department of Environmental Conservation (the "Department") shall request that a public hearing be convened at the Region 3 office of this Department at such place and on such day or days as the Hearing Officer may fix, in order to consider certain violation(s) of Article 27 of the Environmental Conservation Law which Respondent is charged with having committed as more specifically set forth in the attached Complaint.

PLEASE BE ADVISED that pursuant to 6 NYCRR § 622.4, Respondent must, within 20 (twenty) days of receiving this Notice of Hearing and Complaint, serve upon the New York State Department of Environmental Conservation staff an Answer signed by the Respondent, Respondent's attorney or other authorized representative; that any affirmative defenses, including exemptions to permit requirements, will be waived unless raised in the Answer.

PLEASE BE FURTHER ADVISED that failure to make timely service of an Answer or failure to attend a pre-hearing conference will result in a default and waiver of Respondent's right to a hearing.

PLEASE BE FURTHER ADVISED that a hearing date will be set by the Office of Hearings upon the filing of a Statement of Readiness for Adjudicatory Hearing as set forth in 6 NYCRR §622.9.

PLEASE BE FURTHER ADVISED that Respondent may appear at the hearing with or without counsel; that all witnesses will testify under oath; that a record of the proceeding will be made; that Respondent may produce witnesses and evidence in Respondent's behalf; that Respondent may request issuance of subpoenas to compel the attendance of witnesses and the production of records relating to this matter, and that Respondent may cross-examine witnesses and examine evidence produced against Respondent.

PLEASE BE FURTHER ADVISED that whether or not Respondent appears, the hearing will convene at the time and place set by the Office of Hearings and Respondent's non-attendance shall not prevent a determination of Respondent's culpability or innocence of the allegations in the Complaint or any other appropriate action in the event of a finding of violation, including assessment of penalties and/or directing other and further relief.

DATED: June 30, 2008  
Albany, New York

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

BY: Christopher H. Horan  
Christopher H. Horan, Esq.  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-5500  
Work: (518) 402-9507  
Fax: (518) 402-9019

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

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In the Matter of the Alleged Violations of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("6 NYCRR")  
by:

**REVERE SMELTING AND REFINING CORP.**

**COMPLAINT**

Respondent.

Case No.: CO 3-20080618-44

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The New York State Department of Environmental Conservation (the "Department") brings this administrative proceeding pursuant to Title 27 of Article 71 of the Environmental Conservation Law ("ECL"). The Department, by way of complaint against the Respondent, alleges and says:

1. Revere Smelting & Refining Corporation ("Respondent") is a foreign business corporation with its principal executive office located at 2777 Stemmons Freeway, Dallas Texas 75207.
2. Respondent operates a nonferrous metal recycling facility which engages in secondary lead smelting, located at 65 Ballard Road, Middletown, NY 10941.
3. Respondent's operation of the facility results in the generation of hazardous waste as defined in ECL 27-0901(3) and Parts 370 and 371 of 6 NYCRR.
4. Respondent is subject to New York State laws and regulations governing hazardous waste, specifically ECL Article 27, Title 9 and the regulations promulgated pursuant thereto.
5. The Department issued Respondent a Hazardous Waste Management permit to operate a Treatment, Storage and Disposal Facility, pursuant to the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901 et seq. and Article 27 of the ECL, and bearing DEC permit Number #3-3352-00145/00001-0 (the "Part 373 Permit"). The Department retains at all times jurisdiction to interpret and enforce the Hazardous Waste Management Permit.

6. An inspection of Respondent's facility was conducted by an authorized representative of the Department on March 25, 2008. The inspection revealed that Respondent was in violation of the following provision of its Part 373 Permit and 6 NYCRR Part 376:
  - a. 6NYCRR Part 373 Permit, Module V - Section B and 6 NYCRR Part 376.5(a)(2): The Respondent stored wastes to which the land disposal prohibition applies for more than one year. The Respondent could not provide sufficient evidence that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as was necessary to facilitate proper recovery, treatment or disposal. At the time of the inspection, the facility had twelve drums of lead contaminated concrete, all of which were labeled with a start of accumulation date of January 22, 2007.
  
7. ECL § 71-2705 provides that any person who violates any of the provisions of, or who fails to perform any duty imposed by Titles 9, 11 and 13 of ECL Article 27 or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or Order of the Commissioner made pursuant to Title 27 of ECL Article 71 shall be liable in the case of a first violation, for a civil penalty not to exceed \$37,500.00 and an additional penalty of not more than \$37,500.00 for each day during which such violation continues, to be assessed by the Commissioner after an opportunity to be heard pursuant to ECL § 71-1709, or by the court in any action or proceeding pursuant to ECL § 71-2727. In addition, any such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed \$75,000.00 for each such violation and an additional penalty not to exceed \$75,000.00 for each day during which such violation continues.

WHEREFORE, the Department of Environmental Conservation respectfully requests an Order from the Commissioner that:

- I. finds that Respondent committed the above violation of its Part 373 Permit and 6 NYCRR 376;
- II. orders Respondent to pay a civil penalty in the amount of \$6,000.00 (six thousand dollars and zero cents);
- III. orders Respondent to correct the violation described herein within thirty (30) days after the effective date of the Order; and
- IV. grants such other and relief as the Commissioner may deem appropriate.

DATED: June 30, 2008  
Albany, New York

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

BY: Christopher H. Horan  
Christopher H. Horan, Esq.  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-5500  
Work: (518) 402-9507  
Fax: (518) 402-9019

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("6 NYCRR")  
by:

**REVERE SMELTING AND REFINING CORP.**

**CONSENT ORDER**

Respondent.

Case No.: CO 3-20080618-44

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 9 of the Environmental Conservation Law ("ECL") and the hazardous waste management rules and regulations promulgated thereunder in 6 NYCRR Part 370 et seq. This Order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
2. Revere Smelting and Refining Corp. ("Respondent") operates a nonferrous metal recycling facility which engages in secondary lead smelting, located at 65 Ballard Road, Middletown, NY 10941, which results in the generation of hazardous waste and is subject to ECL Article 27, Title 9 and the 6 NYCRR Part 370 regulations promulgated pursuant thereto.
3. Respondent acknowledges that it conducts operations which are subject to ECL Article 27, Title 9 and the 6 NYCRR Part 370 regulations promulgated pursuant thereto.
4. The Department issued Respondent a Hazardous Waste Management permit to operate a Treatment, Storage and Disposal Facility, pursuant to the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901 et seq. and Article 27 of the ECL, and bearing DEC permit Number #3-3352-00145/00001-0 (the "Part 373 Permit"). The Department retains at all times jurisdiction to interpret and enforce the Hazardous Waste Management Permit.
5. An inspection of Respondent's facility was conducted by an authorized representative of the Department on March 25, 2008. The inspection revealed that Respondent was in violation of the following provision of its Part 373 Permit and 6 NYCRR 376:
  - a.) 6NYCRR Part 373 Permit, Module V - Section B and 6 NYCRR Part 376.5(a)(2):  
The Respondent stored wastes to which the land disposal prohibition applies for more

than one year. The Respondent could not provide sufficient evidence that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as was necessary to facilitate proper recovery, treatment or disposal. At the time of the inspection, the facility had twelve drums of lead contaminated concrete, all of which were labeled with a start of accumulation date of January 22, 2007.

6. Respondent admits the truth of the allegations made in Paragraph 5(a) above and in an effort to resolve the claims against it, waives its right to a hearing or to otherwise contest the Department's allegations, and consents to the issuance of this Order and agrees to be bound by its terms.

NOW, THEREFORE, HAVING CONSIDERED THIS MATTER AND BEING DULY ADVISED, IT IS ORDERED THAT:

I. **COMPLIANCE**

Respondent shall come into compliance with the requirements of the Part 373 Permit and the regulations cited in subparagraph 5 (a) within thirty (30) days after the effective date of this Order.

II. **CIVIL PENALTY**

Respondent shall pay a penalty for the cited violation in the amount of \$6,000.00 (six thousand dollars and zero cents). The penalty shall be paid by certified check payable to the Department of Environmental Conservation and shall be due no later than 30 (thirty) days after the effective date of this Order. The check shall be sent to the attention of Thomas J. Killeen, P.E., N.Y.S.D.E.C., Division of Solid and Hazardous Materials, 625 Broadway, 9th Floor, Albany, New York 12233-7251.

III. **SETTLEMENT AND RESERVATION OF RIGHTS**

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violation described in Paragraph 5 of this Order against Respondent and its successors (including successors in title) and assigns.

B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

IV. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty of responsibility.

V. FAILURE, DEFAULT AND VIOLATION OF ORDER

A. Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. Respondent's failure to comply fully and in timely fashion with any provision, term or condition of this Order shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondent by the Department.

C. Any violation of terms or conditions of this Order shall result in a penalty of \$1000 (one thousand dollars and zero cents) per day, per violation.

VI. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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 this Order by Respondent and its successors (including successors in title) or assigns.

VII. BINDING EFFECT

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VIII. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written Order of the Commissioner or the Commissioner's designee.

IX. COMMUNICATIONS

All written communications required by this Order to the Department shall be transmitted by the United States Postal Service, by private courier service, or by hand delivery to:

Division of Solid and Hazardous Materials  
Attn: Thomas J. Killeen, P.E.

New York State Department of Environmental Conservation  
625 Broadway, 9th Floor  
Albany, New York 12233-7251

X. **ENTIRE ORDER**

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in Paragraph 5(a) of this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph VIII of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XI. **EFFECTIVE DATE**

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

Dated: \_\_\_\_\_, 2008  
Albany, New York

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

By: \_\_\_\_\_  
Val Washington  
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a Hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

REVERE SMELTING & REFINING CORP.

By: Michael E. Scharf

Title: VPO operations NY

Date: 7-14-08

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) : SS

On this 14<sup>th</sup> day of July, in the year 2008, before, the undersigned personally appeared Michael Scharf, 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 (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

Patricia A. Crockett

Notary Public

