

DAR-9 / Dry Cleaner Enforcement Guidance

New York State Department of Environmental Conservation

DEC Program Policy

Issuing Authority:



Title: Director, Division of Air Resources

Date Issued: May 26, 2004

Latest Date Revised:

I. SUMMARY: This establishes the Department's policy relating to enforcement of 6 NYCRR Part 232, Perchloroethylene Dry Cleaners. It sets forth and classifies the various types of violations that typically occur at dry cleaning facilities subject to Part 232. It also provides procedures for using enforcement discretion, issuance of Notices of Violation, calculation of penalties, issuance of Short Form Consent Orders by the Division of Air Resources, and referral to the Division of Environmental Enforcement for some classes of violations. This policy shall go into effect 30 days after issuance.

II. POLICY: Violations of Part 232 often result in public health hazards due to the toxicity of perchloroethylene (perc). In addition, the violator may realize an economic benefit by not paying for required equipment, certifications, inspections, etc. This is patently unfair to the thousands of dry cleaner owners and operators who have invested large sums of money to comply with Part 232 and to neighboring residents, business owners and workers who are exposed to perchloroethylene.

Compliance with Part 232 is necessary to ensure that local air quality is protected. It shall be the policy of the Department to ensure that local air quality is protected by bringing non-compliant dry cleaning operations into compliance with the equipment design, operation, and maintenance standards as well as the self monitoring and compliance inspection (a.k.a. "third party inspection") requirements. It shall also be the policy of the Department to impose a penalty that negates the economic benefit derived by dry cleaners that operate in violation of Part 232 and that penalizes violators based on the gravity of the violations.

The penalty guidelines to be followed by Department personnel are set forth in Schedule A of this policy. The Department reserves the right to act at variance with these penalty guidelines where appropriate to achieve a fair resolution with an appropriate level of deterrence. Individual circumstances may warrant assessment of higher penalties and exceptional circumstances with significant mitigating factors may warrant lower penalties. In all circumstances any variable factors that may be unique to a facility will be considered and the Department will endeavor to impose the appropriate sanction for the particular offense in accordance with the Department's Civil Penalty Policy, DEE-1.

In order to promote consistency in enforcement, Department personnel must follow certain procedures before imposing a penalty that differs significantly from the recommended penalties set forth in Schedule A of this policy. The economic benefit component of the penalty set forth in Schedule A should be regarded as non-negotiable and must be collected in all cases. The gravity component of the penalty set forth in Schedule A must also be collected in all cases except where extreme mitigating circumstances warrant that the gravity component of the penalty be reduced below the specified amount. In any case, the minimum penalty (combined economic benefit and

gravity components) allowed by the Environmental Conservation Law is \$375 per violation.

The gravity component of the penalty may not be reduced more than 50% from the specified amount set forth in Schedule A of this policy based upon extreme mitigating circumstances without first obtaining the approval of the DAR Enforcement Section Chief for cases that have not been referred to legal, or the DEE Central Office air enforcement attorney for cases that have been referred to the Regional Attorney. Similarly, if unique aggravating circumstances (e.g., the culpability of the respondent or the respondent's history of non-compliance) warrant that the gravity component of the penalty be increased more than 50% from the minimum amount set forth in Schedule A of this policy, the penalty amount must be approved by the DAR Enforcement Section Chief for cases that have not been referred to legal or the DEE Central Office air enforcement attorney for cases that have been referred to the Regional Attorney.

III. PURPOSE AND BACKGROUND: The purpose of this policy is to establish procedures to assist staff in addressing dry cleaners who have not complied with the requirements of Part 232. Part 232 requires dry cleaners to take various measures to reduce impacts of perchloroethylene emissions depending on the type of equipment operated, the emission concentration, and whether the facility stands alone or is in a mixed-use structure.

Part 232 requires dry cleaning facilities to acquire permits or registrations as appropriate under Part 201. It also requires compliance with specific equipment standards, operation and maintenance standards, implementation of self monitoring programs, use of certain waste management procedures and specifications, owner and operator training and certification, Section 232.16 compliance inspections, recordkeeping and reporting, and posting a public information notice. While violations of some of these requirements may not pose a significant public health risk, others are more serious due to the toxicity of perchloroethylene, the mixed-use setting of many dry cleaning facilities, or the importance of the violated requirement to the regulatory scheme. This policy attempts to classify the types of violations based on the Department's experience with the rule and to establish uniform enforcement standards to be used by all Department personnel against perc dry cleaners throughout New York State.

IV. RESPONSIBILITY: The Bureau of Stationary Sources' Enforcement Section in consultation with the Permitting and Compliance Section shall have primary responsibility for ensuring that this policy remains up-to-date and providing any additional interpretation that may be needed. Staff from both of these Sections, Air Resources staff in the DEC Regional Offices, and Division of Environmental Enforcement staff in both the Regional and Central Offices are responsible for following the policies and procedures. Staff from the other units should point out any issues that may arise with application or interpretation of this policy to the Enforcement Section.

V. PROCEDURE: A Department inspector must follow the procedures set forth in Schedule B of this policy in determining the appropriate action to take for a particular case. Penalties shall be assessed by Air Resources, Environmental Enforcement or regional staff according to Schedule A of this policy. Staff should use the Part 232 model NOV in Schedule C of this policy or the system generated NOV from the Air Facility System (AFS) and the Short Form Consent Order in Schedule C of this policy for enforcement actions.

The Consent Orders proposed by the Department should contain clear deadlines for compliance and payment of penalties. Payment schedules, as shown in the model Consent Order, should only be used when all four of the following conditions are met:

1. The total penalty amount exceeds \$1000.
2. The respondent has demonstrated that a hardship would be incurred without a payment schedule.
3. The payment schedule shall not extend beyond twelve months past the effective date of the Order.
4. Full payment shall be made in no more than four installments.

VI. Specific Violations

A. Equipment Phase-outs and Upgrades: Part 232 specifies that facilities which currently use third generation machines must either replace these machines with new fourth generation machines, convert their old machines to fourth generation machines, or install door fan/carbon adsorber/local exhaust systems within four years of the effective date of the regulation, that is, by May 15, 2001. While the Department has not actually extended this deadline, it announced on February 13, 2001 that it would delay enforcement of these requirements until nine months after the first perchloroethylene dry cleaning machine receives full certification per §232.13.

The first perchloroethylene dry cleaning machine was certified on September 26, 2002. Therefore, dry cleaning facilities not currently complying with either paragraph 232.6(b)(3)(iii) - [stand-alone facilities] or 232.6(b)(6)(iii) - [mixed-use facilities] must be brought into compliance with these requirements no later than June 26, 2003. This enforcement deferral was further extended by order of the Commissioner to address timely availability of certain machines. According to this second enforcement extension, only dry cleaners with signed contracts dated by June 26, 2003, for installation of new equipment would be eligible for the extension. Eligible shops had until September 24, 2003, to comply. Shops without such contracts were subject to enforcement on the June 26, 2003, deadline.

As of the date of this policy, Part 232 requires one additional equipment phase-out. All machines in mixed-use commercial settings that have been retrofitted with controls according to paragraphs 232.6(c)(1) and (2), must be removed from service or replaced with certified fourth generation equipment by January 1, 2005.

B. Certified Owner/Manager and Operator: Subdivision 232.14(f) provides a schedule under which dry cleaning owner/managers and dry cleaning operators were required to first obtain training and certification. The first year in violation (subsequent to the later of June 30, 2000, or start of operation) should be considered a Level 2 violation. If the Respondent fails to obtain an owner/manager or operator certification for more than one year this should be considered a Level 3 violation and the matter should be referred to the Regional Attorney or the DEE Central Office air enforcement attorney. The referral should explain the length of time of the violation.

C. Permitting: Many facility owners applied for their Registrations before the applicable deadline. Do not cite a violation if the owner has proof that the application for the Registration was submitted to the Department before the deadline (e.g., a certified mail receipt). Some owners applied more than once, so use the earliest application date to determine if a violation exists.

D. Pre-Permitting Requirements for Existing Facilities: In general, the requirements of

§232.5 either refer to or closely correlate with a requirement found elsewhere in the rule. For example, the recordkeeping requirements in §232.5(g) refer to §232.12. Therefore, in situations where a violation of §232.5 would also amount to a violation of another section of Part 232, staff may simply cite a violation of the requirement that is contained elsewhere in Part 232 without also citing a violation of §232.5.

E. Vapor Barrier Installation: In late 1998, the Department exercised enforcement discretion for many facilities with third generation machines required to install vapor barriers by November 15, 1998. The facilities were given until May 15, 1999, to install the vapor barrier. If any inspection forms from before January 1, 2001, are under review and show that the vapor barrier for a third generation machine was installed between November 15, 1998 and May 15, 1999, this should be considered a violation, but no penalty should be assessed.

Since most vapor barriers have been installed for several years and their existence has been documented on the Compliance Inspection reports, there is no current need to check for the vapor barrier notification letter. However, if Department staff find uninspected facilities without Registrations, they should add violations of paragraph 232.5(a)(3) to the list of violations and seek an appropriate penalty.

F. Spill Pans: Machines installed or reinstalled after May 15, 1997, are required to have a spill pan according to paragraph 232.6(a)(7). Since older machines are exempt, the floor under the machine should have been sealed as much as possible with a Department approved epoxy when the vapor barrier was installed. A spill pan is not a retrofit requirement until the machine has to be lifted from the floor for some other reason. When an existing machine is lifted, the floor must be thoroughly sealed at that time.

G. Equipment Certification: Violations by manufacturers, their representatives, and vendors of Section 232.13 must be dealt with severely since they can put complying businesses at an extreme economic disadvantage. Furthermore, they may cause public health problems where unsuspecting dry cleaning shop owners believe they are complying with Part 232 and install such machines. The economic benefit penalty listed in Schedule A is an estimate of the excess profits a vendor may realize by selling uncertified equipment. It is not based on the cost of equipment testing and the certification process. In cases arising from this type of violation, Department staff should attempt to verify the actual profit derived from the sale of each machine based on a review of the Respondent's financial records. Repeated violations of this section may be subject to criminal prosecution and are beyond the scope of this policy. Due to their cross-regional implications, all equipment certification cases should be referred to the Central Office Division of Environmental Enforcement.

H. Compliance Inspection Reports: Failure to properly fill out or submit reports of Compliance Inspections are a violation by the Registered Compliance Inspector. As stated in subdivision 232.16(i), these may result in the removal of the inspector from the list of registered inspectors. They are also subject to penalties according to Schedule A. Falsification of compliance inspection records by a source owner or operator, a Registered Compliance Inspector, or an employee of a Registered Compliance Inspector may be criminal acts subject to criminal prosecution and are beyond the scope of this policy. Due to their cross-regional implications, report falsification cases must also be referred to the Central Office Division of Environmental Enforcement. Cases involving improperly filled out or submitted compliance inspection reports may be dealt with by the Regions.

Related References:

Title 6 NYCRR Part 232, Perchloroethylene Dry Cleaning Facilities

Title 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Civil Penalty Policy (Division of Environmental Enforcement Program Policy DEE-1)

Small Business Self-Disclosure Policy (Commissioner Policy CP-19)

SCHEDULE A

As noted in this policy, economic benefit penalties are intended to nullify the economic advantage the violator has received from operating in violation. Gravity based penalties shall be assessed in addition to these to deter future violations. The gravity component shall take into account the potential harm and actual damage to the environment or public health and the importance of the violated requirement to the regulatory scheme. The penalties below represent the minimum payable penalty that should be recovered in an enforcement action against those who promptly and voluntarily enter into settlement to achieve compliance. It is not appropriate to offer such a benefit to those who do not promptly enter into a binding agreement to achieve compliance. Therefore, where the respondent has failed to respond to a Short Form Consent Order and staff must refer a case to the Regional Attorney or the Central Office air enforcement attorney for further enforcement action, a greater penalty should be recommended in the referral. This greater penalty should not exceed twice the minimum recommended penalty set forth below unless the respondent has demonstrated a culpable mental state (e.g., if the violation was committed intentionally, recklessly or with gross negligence) or where respondent has a history of non-compliance that warrants a greater penalty.

Level	Section/Violation	Recommended Penalty
1	Reporting and Recordkeeping aspects of sections 232.7, 232.8, and 232.12 232.18 - Notice Posting 232.5(a)(3) - Notification of installation of vapor barrier or general exhaust ventilation system 40 CFR 63 Subpart M - Notifications	<p><u>Economic Benefit Component for Level 1 violation</u> none</p> <p><u>Gravity Component for Level 1 violation</u> First Offense without any Level 2 or Level 3 violations - none First Offense with Level 2 or Level 3 violations - \$375 Repeat Level 1 Offense - \$500</p> <p><u>Comments:</u> For Level 1 violations, if the Respondent violates more than one requirement within a section, this may be counted as a single violation and assessed a single penalty</p>

Level	Section/Violation	Recommended Penalty
2	<p>232.7 - Leak Inspection & Self Monitoring</p> <p>232.8 - Operation and Maintenance</p> <p>232.10 - Hazardous Waste Management</p> <p>232.11 - Emergency Response</p> <p>232.12(a)(1), (6), and (7) - Emergency Response, Hazardous Waste and Wastewater Recordkeeping</p> <p>232.14 (First year) - Owner/Manager or Operator Certification</p> <p>232.15 - Permitting</p> <p>Subpart 201-4 - Minor Source Registrations</p> <p>Subpart 201-5 - State Facility Permits</p> <p>232.16(j) - Availability of inspection reporting forms and Repair and Reinspection</p>	<p><u>Economic Benefit Component for Level 2 violation</u></p> <p>Permitting violations - The amount of unpaid regulatory fees (for facilities requiring a Registration this is \$160 per year for each year of operation without a permit from 1999 through 2003)</p> <p>Section 14 - If, and only if, the owner/manager or operator does not intend to take course work to gain certification, or the owner has sold the shop and has not taken the appropriate course work, and no longer can become certified, all course fees should be recovered. These course fees are \$500 for each certification that must be obtained.</p> <p>Other Level 2 violations - none</p> <p><u>Gravity Component for Level 2 violation</u></p> <p>Leaks under section 7, and sections 8 through 12</p> <p>50 to 249 ppm - \$375 per leak 250 ppm or more - \$750 per leak visible dripping - \$1,000 per leak</p> <p>Section 7, Failure to perform weekly leak inspections - \$375 per missed inspection (Discretion may be used when 4 or fewer weekly inspections are omitted in a calendar year).</p> <p>Section 14 (First Year) - \$375 for each certification that must be obtained.</p> <p>Section 15 and Part 201 - \$375 for first year of operation without a permit/registration. \$500 per year for subsequent years.</p> <p>Other Level 2 violations - \$375 per violation</p> <p><u>Comments:</u></p> <p>If a leak could be viewed as a violation of more than one section of Part 232, only one section of Part 232 should be cited and a single penalty should be imposed.</p> <p>Failure to monitor to detect a leak should be viewed as a separate violation in addition to the leak itself if the Department has evidence that the Respondent failed to properly perform a weekly inspection (e.g., if the Respondent did not perform a weekly inspection or the leak detector used was not properly calibrated)</p> <p>Violations for not obtaining the necessary permit or registration under Part 201 and section 15 should be viewed as a single violation.</p> <p>Violations under sections 14 and 16 should be viewed as separate violations.</p>

Level	Section/Violation	Recommended Penalty
3	<p>232.4 - Prohibitions</p> <p>232.5(a)(1) and (2) - Vapor barriers and general exhaust ventilation</p> <p>232.6 - Equipment Standards</p> <p>232.9 - Wastewater Management</p> <p>232.13 - Equipment Testing and Certification</p> <p>232.14 (More than 1 year) - Owner/Manager or Operator Certification</p> <p>232.16(a) - Third party inspection</p> <p>232.16(b) through (i) - Violations by a Registered Compliance Inspector</p> <p>40 CFR 63 Subpart M - Equipment Standards</p>	<p><u>Economic Benefit Component for Level 3 violation</u></p> <p>Failure to install a vapor barrier or general exhaust ventilation system by the deadline - \$125 per month per violation</p> <p>Failure to retrofit or upgrade to a 4th generation machine - \$250 per month</p> <p>Failure to obtain certification for dry cleaning machines or equipment sold, offered for sale, etc. - \$2000 per machine or piece of equipment</p> <p>Section 14 - If, and only if, the owner/manager or operator does not intend to take course work to gain certification, or the owner has sold the shop and has not taken the appropriate course work, and no longer can become certified, all course fees should be recovered. These course fees are \$500 for each certification that must be obtained.</p> <p>Failure to obtain a third party Compliance Inspection - \$500 for each missed inspection</p> <p>Failure by Registered Compliance Inspectors or their employees to comply with 232.16(b) through (i) - \$250 for each inspection conducted in violation.</p> <p>Other Level 3 violations - none</p> <p><u>Gravity Component for Level 3 violation</u></p> <p>Failure to install a vapor barrier or general exhaust ventilation system by the deadline - \$250 per month per violation</p> <p>Failure to retrofit or upgrade to a 4th generation machine - \$250 per month</p> <p>Leaking, deteriorated or otherwise damaged equipment - \$375 for each equipment violation</p> <p>Wastewater Management - \$500 per violation</p> <p>Failure to obtain certification for dry cleaning machines or equipment sold, offered for sale, etc. - \$1000 per machine or piece of equipment</p> <p>Failure to obtain an owner/manager or operator certification for more than one year - \$375 for the first year (as required for a Level 2 violation) plus \$500 for each year or portion of a year after the first year that the respondent failed to obtain the certification. Each certification that has not been obtained should be viewed as a separate violation</p> <p>Failure to obtain a third party Compliance Inspection - \$500 for each missed inspection</p> <p>Failure by Registered Compliance Inspectors or their employees to comply with 232.16(b) through (i) - \$250 for each inspection conducted in violation.</p> <p>Other Level 3 violations - \$375 per violation</p> <p><u>Comments:</u> Each violation for failure to install a vapor barrier, a general ventilation system, a door fan with control equipment, or an acceptable emission point location (for 1st or 2nd generation equipment) by the applicable deadline should be treated as a separate violation and should also be treated separately from other violations for operating non-complying equipment. Separate penalties should be assessed for each separate violation</p>

SCHEDULE B

Description of Violations

Action Required

Level 1 - First Offense
(no other violations)

Open case in AFS, issue a NOV, and propose remedial action. Withdraw case from AFS without penalty upon proof that the facility has achieved compliance.

Level 1 - First Offense
(with first time Level 2 violations,
but no Level 3 violations)

Open case in AFS, issue a NOV and resolve with a penalty by Short Form Consent Order. A cover letter should accompany the NOV and order which gives the respondent 30 days to sign the Short Form Order.

Level 1 - Repeat Offender
(with no other violations or
with first time Level 2 violations,
but no Level 3 violations)

If the respondent has not executed the Short Form Consent Order and returned it with payment within 60 days from the date that it is sent to respondent, the case must be immediately referred to the Regional Attorney or the Central Office air enforcement attorney. The referral should recommend a penalty which exceeds the minimum penalty described in Schedule A of this policy. This penalty should not exceed twice the recommended minimum penalty unless unique aggravating circumstances warrant a greater penalty.

Level 2 - First Offense
(with no other violations or
with Level 1 violations, but
no Level 3 violations)

Level 2 - Repeat Offender

Open the case in AFS and refer the case to the Regional Attorney or the Central Office air enforcement attorney. The referring case summary report should include all pending violations and a history of non-compliance.

Level 3 - First Offense or Repeat Offender

A repeat Level 2 offender shall be a respondent that commits a Level 2 violation at a point in time and then commits another Level 2 violation of any kind within the next two years.

Note: A Department inspector or reviewer who discovers violations at a dry cleaning facility should assess whether additional violations exist. For example, if the violation is found in a previously unreviewed current-year third-party Compliance Inspection report, the reviewer should check for violations in the reports from the previous two years. This will provide information about ongoing or repetitive violations.

Schedule C
Model Notice of Violation and Short Form Consent Order

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of Alleged Violations of Articles 19 and 71 of
the Environmental Conservation Law of the State of New York
("ECL") and Parts 201 and 232 of Title 6 of the Official Compilation
of Codes, Rules and Regulations of the State of New York
("NYCRR")

NOTICE OF VIOLATION

-By-

DEC Case No. _____

Respondent(s).

-----X

PLEASE TAKE NOTICE THAT YOU ARE IN VIOLATION OF THE NEW YORK STATE AIR POLLUTION CONTROL LAW, Article 19 of the Environmental Conservation Law ("ECL"), and applicable regulations as set forth herein, in connection with operation of a dry cleaning facility located at:

_____. Operation of the aforementioned dry cleaning facility in the documented manner constitutes a violation of Article 19 of the ECL and the regulations promulgated thereunder. Specifically, you are in violation of ECL §19-0301, 6 NYCRR Part 201 and 6 NYCRR Part 232.

PLEASE TAKE FURTHER NOTICE THAT ECL §71-2103 provides that any person who violates ECL Article 19 or any code, rule or regulation promulgated pursuant thereto shall be liable for a civil penalty of up to \$15,000.00, plus an additional penalty not to exceed \$15,000.00 for each day that the violation continues and that such person may be enjoined from continuing such violation.

PLEASE TAKE FURTHER NOTICE THAT in addition, failure to comply with this NOTICE DIRECTIVE could subject you to criminal charges. ECL §71-2105 provides that any person who willfully violates any provision of ECL Article 19 or any code, rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and, upon conviction, punished by a fine not to exceed \$10,000.00 for each separate violation or by imprisonment for a term of not more than one year, or both such fine and imprisonment.

PLEASE TAKE FURTHER NOTICE THAT the Department is reviewing its options regarding the appropriate enforcement action, including assessment of penalties, fines and injunctive relief for the violations which have already occurred. Compliance with this NOTICE by IMMEDIATELY CORRECTING THE VIOLATIONS shall not relieve you of any liability for penalties or other appropriate sanctions for the above referenced violations. However, failure to immediately comply could result in a larger penalty than would otherwise be assessed, should you be adjudged to be in violation of the ECL.

PLEASE TAKE FURTHER NOTICE THAT you may submit information or evidence to the Department relevant to your compliance record, the nature of the violations, or any mitigating circumstances. Any such information or evidence may be used in a civil enforcement proceeding or criminal action. In the event that formal enforcement proceedings are initiated or criminal charges filed against you, you will have the right to a hearing. You may also request an informal conference to discuss this NOTICE and the events to which it relates. Any inquiries, submissions, and requests relating to this NOTICE should be directed to the undersigned.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ERIN M. CROTTY, COMMISSIONER

Dated:

By: _____
(Insert Title)

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of Violations of Articles 19 and 71 of the
Environmental Conservation Law of the State of New York
("ECL") and Parts 201 and 232 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York ("NYCRR")

CONSENT ORDER

DEC Case No. _____

-By-

Respondent.

-----X

1. The New York State Department of Environmental Conservation ("the Department") is vested with jurisdiction to enforce laws governing the control and prevention of air pollution pursuant to Article 19 of the Environmental Conservation Law, the rules promulgated pursuant thereto at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), and Section 3-0301 of the Environmental Conservation Law ("ECL").

2. The term Respondent shall refer to all Respondents who have executed this Consent Order.

3. Respondent owns, operates and maintains a dry cleaning facility, as defined in 6 NYCRR 232.2(b)(22), located at: _____. Respondent's dry cleaning facility uses perchloroethylene ("perc") as defined in 6 NYCRR 232.2(b)(48).

4. Respondent committed the following violations as described in the Notice of Violation dated _____.

(a) Respondent violated _____ by _____

(b) Respondent violated _____ by _____

5. Respondent admits the violations referenced above, waives its rights to a hearing in this matter and judicial review as provided by law, consents to the issuance 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**:

I. Civil Penalty. The Department assesses Respondent a civil penalty in the amount of _____, which is to be paid by **certified check or money order** made payable to "Commissioner of the Department of Environmental Conservation" and sent simultaneously with this Order to: _____

OR (FOR USE WITH PAYMENT PLANS ONLY)

I. Civil Penalty. The Department assesses Respondent a civil penalty in the amount of _____, of which amount Respondent shall pay by **certified check or**

money order made payable to "Commissioner of the Department of Environmental Conservation" and sent to the Department according to the following payment plan:

Payment One of _____ due on or before _____.

Payment Two of _____ due on or before _____.

Respondent shall return this executed Order and send the above payments to:

_____. It is agreed by the parties that in the event that Respondent fails to make any of the payments set forth herein by the above mentioned deadlines, the entire amount of the civil penalty shall become due and payable immediately and such failure shall be deemed a confession of judgment for the full amount of the civil penalty without the need for any further proceedings whatsoever.

II. Schedule of Compliance. Respondent shall take all corrective actions described in Appendix A of this Consent Order. The parties herein agree that if the Department staff determines that Respondent has failed to take any of the corrective actions set forth in Appendix A of this Consent Order by the deadlines set forth therein, such failure shall be grounds for suspension or revocation of any registration or permit issued to Respondent and shall also be grounds to seal all air contamination sources at the facility pursuant to 6 NYCRR 200.5 without the need for any further proceedings whatsoever.

III. Compliance with Order. Respondent shall strictly comply with the terms and conditions contained in this Order.

IV. Violation of Order. 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 Environmental Conservation Law.

V. Reservation of Rights. The Department hereby reserves all its legal, administrative and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any summary abatement powers the Commissioner may have pursuant to Section 71-0303 of the ECL.

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) and assigns.

VII. 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 to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility. This provision shall in no way limit the Department's right to inspect under ECL 19-0305(2)(a) or as otherwise allowed by law.

VIII. Dishonored Check Fee. Respondent will pay a dishonored check fee of Twenty Dollars (\$20.00) for all checks returned for insufficient funds. Respondent shall also be subject to State Finance Law §18.

IX. Effect of Order. The provisions hereof shall constitute the entire Order between Respondent and the Department regarding the violations referenced above. No modification to this Order shall be effective except as set forth in writing and approved by the Commissioner or a duly authorized representative with the same formality as this Order. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its agents, servants, employees, successors and assigns.

X. Authority to Execute Order. The individual signatories to this Order represent that they have the authority to bind the respective parties by execution of this Order.

XI. Effective Date. The effective date of this Order shall be the date that it is signed by the Commissioner or the Commissioner's designee.

Dated:

Albany, New York

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
ERIN M. CROTTY, COMMISSIONER

By: _____
Director, Division of Air Resources

