

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Environmental
Conservation Law Article 19

- by -

ORDER ON CONSENT
File No. R4-2009-0703-111

Dr. Stuart Lyman
d/b/a L & L Associates
910 Delaware Ave
Delmar, New York 12054

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the State pursuant to ECL Article 19.
2. Respondent, L & L Associates, owns and/or operates Delmar Animal Hospital, a veterinary hospital located at 910 Delaware Ave, Delmar, New York ("facility").
3. Respondent is a person as defined in ECL §33-0101 (33).
4. Respondent operates a cremation unit in the ordinary course of its business operation.
5. Respondent was issued a Certificate to Operate the cremation unit on November 25, 1987 which was renewed on November 24, 1992 (DEC Permit No. 4-0122-00032).
6. Department staff conducted an investigation of the facility on July 1, 2009.

First Violation

7. Regulations at 6 NYCRR Part 219-5.2 (a) provide that "*All incinerators having a capacity of 2,000 lb/hr or less and built and installed after January 1, 1968, must be designed, built, installed and operated to meet the emission limits of Figure 1, Appendix 2.*"
8. At the time of the July 1, 2009 inspection, the charge rate of the cremation unit was approximately 110 lbs per hour. The manufacturer specifies the charge rate for the unit at 60-65 lbs per hour.
9. Respondent violated regulations at 6 NYCRR Part 219-5.2 (a) by operating in excess of manufacturing design loading limits.

Second Violation

10. Regulations at 6 NYCRR 219-5.3(a) provide that *“No incinerator, built or installed after January 26, 1967, regardless of size, will emit visible emissions having an average opacity during any six consecutive minutes of greater than 20 percent, under normal operating conditions.”*
11. At the time of the July 1, 2009 inspection, Department staff performed a Method 9 visible emissions observation of the emissions from the incinerator stack located in the back of the building.
12. The results of the Method 9 visible emissions observation indicated that the emissions from the incinerator were approximately 98.3% opacity.
13. Respondent violated regulations at 6 NYCRR 219-5.3(a) when the incinerator exhibited greater than 20 percent opacity on July 1, 2009.
14. Respondent has affirmatively waived his right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

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

I. With respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department, and shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

III. This Order is binding upon the Respondent, his agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

V. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VI. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, their employees, their servants, their agents, their successors or their assigns.

VIII. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2009
Rotterdam, New York

Commissioner Alexander B. Grannis
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Dr. Stuart Lyman d/b/a L & L Associates

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF _____)

COUNTY OF _____)ss.:
_____)

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Respondent shall cease operation and remove the existing incinerator on or before October 15th, 2009. Respondent shall install a new incinerator which complies with regulations at 6 NYCRR 219-4. In the event that the process is delayed due to circumstances beyond the Respondent's control, Respondent shall advise Department staff of the delay and provide documentation to support the reason for the delay.
2. Once installation of the new incinerator is complete, Respondent shall have up to two weeks of manufacturer training in the proper operation of the new incinerator. The required testing and certification of the new equipment shall be performed before the unit is placed in full operation.
3. Respondent shall successfully complete the Animal Crematory Operator Training and Certification Program as soon as the class is offered and upon completion, shall submit to the Department, documentation to establish both attendance and certification.
4. After installation of the new incinerator, Respondent shall operate in accordance with the requirements of 6 NYCRR 219-4 and on an indefinite basis, maintain a bound logbook containing the date, start time of cremation, total charging load, and length of each cremation run.