

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

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July 24, 2013

Timmery Donahue, Attorney
Clean Harbors Environmental Services, Inc.
42 Longwater Drive
P.O. Box 9149
Norwell, MA 02061

Re: Order on Consent
R4-2013-0521-70

Dear Ms. Donahue:

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

This will also acknowledge receipt of \$85,000 the civil penalty pursuant to Paragraph I.

Sincerely,

Jill T. Phillips
Regional Attorney
Region 4

Enclosure

cc: M. Franklin

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (“ECL”) Article 27 and Article 12
of the New York State Navigation Law
and Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York (“6 NYCRR”),

ORDER ON CONSENT
File No. R4-2011-0412-41

-by-

Clean Harbors Environmental Services, Inc.

RESPONDENT

WHEREAS:

Jurisdiction

1. The Department has jurisdiction in all matters pertaining to the collection, treatment and disposal of solid waste pursuant to ECL Article 27 and applicable regulations.
2. The Department is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, inter alia, ECL Section 3-0301. In particular, the Department has administrative jurisdiction over oil spill prevention and control pursuant to Article 12 of the New York State Navigation Law (“NL”).
3. Respondent, Clean Harbors Environmental Services, Inc., is Massachusetts corporation, registered in New York State and does business, in part, as a petroleum cleanup contractor.
4. 6 NYCRR 360-14.3(a) provides that “A used oil collection center or transfer facility must obtain a Part 360 permit for the construction and operation of the facility.”
5. 6 NYCRR 360-14.1(b)(8) provides that “The storage of used oil by a transporter permitted under Part 364 of this Title at such transporter’s facility for a period of 10 calendar days or less, is exempt from permitting under this Part, provided that no transfer, pumping or consolidation of loads occurs. Facilities storing beyond 24 hours must also comply with the facility standards of 40 CFR 279, Subpart E, incorporated by reference in section 360-1.3 of this Part.”
6. 6 NYCRR 360-1.7(a)(1)(i) provides that “no person shall construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit.”
7. 6 NYCRR 360-1.7(b)(4)(iii) provides that “For excavated petroleum contaminated soils, on-site storage is limited to 60 days unless otherwise approved by the department.”
8. Navigation Law Section 173 prohibits the discharge of petroleum.

9. Navigation Law Section 175 states that any person responsible for causing a discharge shall immediately notify the Department pursuant to rules and regulations established by the Department, but in no case later than two hours after the discharge.
10. Navigation Law Section 176 requires that any person discharging petroleum immediately undertake to contain such discharge.
11. Respondent is a “person” as defined in Section 172 of the NL.

Violations

12. On or about February 2013, Department staff conducted an inspection of Respondent’s Uniform Hazardous Waste Manifest records.
13. The inspection of the manifests revealed 10 separate instances during the time period from April 2012 to January 2013 of Respondent transporting a #6 fuel oil load from a tank cleaning/closure at the Momentive Performance facility (former General Electric) located at 260 Hudson River Road, Waterford, New York to its facility located at 32 Bask Road, Glenmont, New York (“Glenmont facility”) and then storing the used oil loads in frac tanks for periods in excess of 10 days and then consolidating the used oil loads before final transport to its facility in South Portland, Maine.
14. Department staff have checked its records and confirmed that Respondent does not have a transfer station permit for its Glenmont facility.
15. Respondent’s operation of a used oil transfer station at its Glenmont facility without a permit is a violation of 6 NYCRR 360-1.7(a)(1)(i) and 6 NYCRR 360-14.3(a).
16. On or about June 1, 2012, during the transfer of one of the loads of #6 fuel oil to a frac tank, a spill of approximately 400 to 600 gallons of the #6 fuel oil occurred at Respondent’s Glenmont facility. Respondent did not report the spill. Clean up of the spill consisted of the scraping up the contaminated soil and stockpiling it in back of the yard at the Glenmont facility. To date, the stockpile of contaminated soil has not been removed for proper disposal.
17. On December 12, 2012, Department staff conducted an inspection at Respondent’s Glenmont facility and observed a spill of approximately 30 gallons of the #6 fuel oil near one of the frac tanks. Respondent did not report the spill. Respondent has not cleaned up the spill.
18. Respondent’s two discharges of #6 fuel oil its Glenmont facility are violations of Section 173 of the NL.
19. Respondent’s failure to notify the Department of the two discharges of #6 fuel oil its Glenmont facility are violations of Section 175 of the NL.
20. Respondent’s failure to contain the two discharges of #6 fuel oil its Glenmont facility are violations of Section 176 of the NL.
21. Respondent’s storage of the contaminated soil from the June 2012 spill at its Glenmont facility in excess of 60 days is a violation of 6 NYCRR 360-1.7(b)(4)(iii).

Civil Penalty

22. ECL 71-2703(1) provides that any person who violates any provision of title 3 or 7 of Article 27 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for a first violation and one thousand five hundred dollars (\$1,500) for each day the violation continues, and may be enjoined from continuing such violation.

23. NL Section 192 provides that any person who violates any of the provisions of Article 12 of the NL, or any rule promulgated thereunder, or who fails to comply with any duty created by this article, shall be subject to a penalty not to exceed Twenty-five thousand dollars (\$25,000).

Waiver of Hearing

24. Respondent has affirmatively waived its 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 its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000) is hereby assessed against the Respondent. EIGHTY FIVE THOUSAND DOLLARS (\$85,000) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, THIRTY THOUSAND DOLLARS (\$30,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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 the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

Regional Spills Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

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

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

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

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

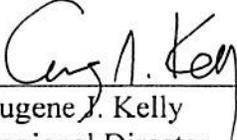
2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: 7/24, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

Schedule of Compliance

1. Within 30 days of the effective date of this Order, Respondent shall remove the contaminated soil stockpile from the Glenmont facility, properly dispose of it and submit proof of proper disposal to the Department.
2. Within 15 days of the effective date of this Order, Respondent shall submit to the Department, a subsurface investigation work plan to determine the extent and magnitude of subsurface contamination. The work plan shall include a time schedule of when each phase of the proposed investigation will be completed. The Department shall either approve or disapprove of the work plan, in writing, within 15 days. If the work plan is disapproved, the Department shall specify any deficiencies and required modifications. Within 15 days of the receipt of the Department's disapproval notice, Respondent shall submit a revised work plan which addresses the Department's comments, correcting all deficiencies identified in the disapproval notice.
3. Within 30 days of the Department's notice of approval of the subsurface investigation work plan, Respondent shall implement the approved plan.
4. Within 60 days of the completion of the field work portion of the subsurface investigation work plan, Respondent shall submit a Report containing all of the data and information gathered during the investigation and include, scaled site maps, groundwater contour maps, analytical data tables, a discussion of results and recommendations for further action. The Department shall respond to Respondent in writing, with comments pertaining to the report and will provide future investigation, remediation and reporting requirements, as is deemed necessary by the Department and consistent with the Department's applicable policies and guidance documents. Any written Department requirements pertaining to this site will be made part of this Schedule of Compliance.
5. To the extent that any measures undertaken pursuant to the corrective action plan requires treatment and discharge of waste waters to groundwaters or surface waters of New York State, or operation of an air point source, Respondent shall be authorized to undertake such treatment and discharge in accordance with the general conditions attached in Appendix A, and the applicable standards contained in Appendix B, notwithstanding any otherwise applicable requirements.
6. Respondent shall maintain and operate the approved remediation system, if any, until the Department approves its suspension or termination.

APPENDIX A
General Conditions Applicable to All Wastewater Discharges

1. Advance notice shall be given to the Department of any planned changes in the treatment facility or activity which may result in noncompliance with effluent limitations.
2. Any noncompliance which may endanger health or the environment must be reported orally within 24 hours from the time Respondent becomes aware of the circumstances. A written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if it has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent the noncompliance and its recurrence.
3. Bypasses which do not cause a violation of effluent limitations are allowable, but only of essential maintenance, repairs or replacement to assure efficient and proper operation. The Department must be given 5 days advanced written notice of any anticipated bypass. The Department shall be notified within 24 hours of any unanticipated bypass.

Bypass is prohibited, and the Department may take enforcement action, unless:

- the bypass was unavoidable to prevent loss of life, personal injury, public health hazard, or severe property damage;
- there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities or retention of untreated wastes; and
- required notices were sent to the Department and, with the exception of emergency conditions, were accepted by the Department.

"Bypass" means the intentional or unintentional diversion of wastewater around any portion of a treatment facility for the purpose or effect of reducing the degree of treatment intended to be provided by the bypassed treatment facility.

"Severe property damage" means substantial damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass.

APPENDIX B

Water Discharges are to meet the standards listed in the following tables:

| | GASOLINE GW EFFLUENT STANDARD | GASOLINE SW EFFLUENT STANDARD | SAMPLING FREQUENCY |
|---------------|-------------------------------------|-------------------------------------|-----------------------|
| pH RANGE | 6.5 - 8.5 | 6.5 - 8.5 | Monthly |
| Benzene | 0.7 ug/l | 5.0 ug/l | A |
| Ethyl benzene | 5.0 ug/l | 5.0 ug/l | A |
| Toluene | 5.0 ug/l | 5.0 ug/l | A |
| o-xylene | 5.0 ug/l | 5.0 ug/l | A |
| m-xylene | 5.0 ug/l | 5.0 ug/l | A |
| p-xylene | 5.0 ug/l | 5.0 ug/l | A |
| Mixed Xylenes | 5.0 ug/l | 5.0 ug/l | A |
| Napthalene | 5.0 ug/l | 5.0 ug/l | A |
| MTBE | 50.0 ug/l | 50.0 ug/l | A |

| | FUEL OIL GW EFFLUENT STANDARD | FUEL OIL SW EFFLUENT STANDARD | SAMPLING FREQUENCY |
|--------------------------|-------------------------------------|-------------------------------------|-----------------------|
| pH RANGE | 6.5 - 8.5 | 6.5 - 8.5 | Monthly |
| Benzene | 0.7 ug/l | 5.0 ug/l | A |
| Ethyl benzene | 5.0 ug/l | 5.0 ug/l | A |
| Toluene | 5.0 ug/l | 5.0 ug/l | A |
| o-xylene | 5.0 ug/l | 5.0 ug/l | A |
| m-xylene | 5.0 ug/l | 5.0 ug/l | A |
| p-xylene | 5.0 ug/l | 5.0 ug/l | A |
| Mixed Xylenes | 5.0 ug/l | 5.0 ug/l | A |
| Napthalene | 10.0 ug/l | 10.0 ug/l | A |
| n-Butyl benzene | 5.0 ug/l | N/A | A |
| sec-Butyl benzene | 50.0 ug/l | N/A | A |
| t-Butyl benzene | 50.0 ug/l | N/A | A |
| Anthracene | 50.0 ug/l | N/A | A |
| Dibenz (a,h) anthracene | 50.0 ug/l | N/A | A |
| Flourene | 50.0 ug/l | N/A | A |
| Phenanthrene | 50.0 ug/l | N/A | A |
| Pyrene | 50.0 ug/l | N/A | A |
| Acenapthene | 20.0 ug/l | N/A | A |
| Benzo (a) anthracene | 20.0 ug/l | N/A | A |
| Benzo (b) fluoranthene | 20.0 ug/l | N/A | A |
| Chrysene | 20.0 ug/l | N/A | A |
| Benzo (a) pyrene | 20.0 ug/l | N/A | A |
| Benzo (g, h, I) perylene | 20.0 ug/l | N/A | A |
| Ideno pyrene | 20.0 ug/l | N/A | A |
| Benzo (k) fluranthene | 20.0 ug/l | N/A | A |

**Soil Vapor Extraction System (SVES)
Benzene Emission Limits**

| Stack Height (feet) | Air Flow (cfm) | Maximum Benzene Emissions (ppm-v) | Maximum Benzene Emissions (ug/m ³) | Maximum Benzene Emissions (lbs/hr) |
|---------------------|----------------|-----------------------------------|--|------------------------------------|
| 15 | 50 | 8.00 | 26360 | 0.00494 |
| | 100 | 4.00 | 13180 | 0.00494 |
| | 150 | 2.66 | 8787 | 0.00494 |
| | 200 | 2.00 | 6590 | 0.00494 |
| | 250 | 1.60 | 5272 | 0.00494 |
| 20 | 50 | 14.88 | 49069 | 0.00919 |
| | 100 | 7.44 | 24535 | 0.00919 |
| | 150 | 4.96 | 16356 | 0.00919 |
| | 200 | 3.72 | 12267 | 0.00919 |
| | 250 | 2.98 | 9814 | 0.00919 |
| 25 | 50 | 24.10 | 79458 | 0.01488 |
| | 100 | 12.05 | 39729 | 0.01488 |
| | 150 | 8.03 | 25486 | 0.01488 |
| | 200 | 5.02 | 19864 | 0.01488 |
| | 250 | 4.82 | 15892 | 0.01488 |
| 30 | 50 | 35.72 | 117806 | 0.02206 |
| | 100 | 17.86 | 58903 | 0.02206 |
| | 150 | 11.91 | 39269 | 0.02206 |
| | 200 | 8.93 | 29452 | 0.02206 |
| | 250 | 7.14 | 23561 | 0.02206 |

Air Stripper Benzene Emission Limits

| Stack Height (feet) | Water Flow Rate (gal/min) | Maximum Benzene influent (mg/l or ppm) |
|------------------------|------------------------------|--|
| 15 | 10 | 0.96875 |
| | 25 | 0.375 |
| | 60 | 0.15625 |
| | 100 | 0.0625 |
| | 150 | 0.0625 |
| 20 | 10 | 1.8125 |
| | 25 | 0.71875 |
| | 60 | 0.28125 |
| | 100 | 0.1875 |
| | 150 | 0.125 |
| 25 | 10 | 2.84375 |
| | 25 | 1.125 |
| | 60 | 0.53125 |
| | 100 | 0.28125 |
| | 150 | 0.1875 |
| 30 | 10 | 4.3125 |
| | 25 | 1.6875 |
| | 60 | 0.71875 |
| | 100 | 0.5 |
| | 150 | 0.28125 |