

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

7012 3050 0000 4246 4778

August 12, 2013

Neal Levine
Colonial Cleaners, LLC
177 North Allen St.
Albany, NY 12206

Re: Order on Consent
R4-2013-0620-86

Dear Mr. Levine:

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

This will also acknowledge receipt of \$1375.00 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: G. McPherson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 19
of the Environmental Conservation
Law 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

ORDER ON CONSENT

R4-2013-0620-86

-by-

Colonial Cleaners, LLC
177 North Allen St
Albany, New York 12206

Respondent

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of air resources of the State pursuant to ECL Article 19 and the rules and regulations promulgated there under.
2. Respondent, Colonial Cleaners, LLC, owns and operates a dry cleaning facility as defined in 6 NYCRR 232.2(b)(22) known as Colonial Cleaners, located at 177 North Allen St, Albany, New York ("facility"). The facility is registered as an air contamination source with an effective date of November 13, 2009.
3. The facility operates a 4th generation dry cleaning machine which uses perchloroethylene ("perc") as defined in 6 NYCRR 232.2(b)(48).
4. The facility is inspected annually by a Department registered compliance inspector ("third party inspector") as defined in 6 NYCRR 232.16.
5. Department staff conducted an inspection of the facility on January 23, 2013 and February 18, 2013.
6. Regulations at 6 NYCRR 232.8(b) provide that: "*The operator must operate and maintain all components of the dry cleaning system in accordance with the requirements of this Part and the conditions specified in a facility's operating permit.*"

FIRST CAUSE OF ACTION

7. The facility was inspected on January 23, 2013 by a third party inspector and the submitted compliance report indicated that there was a perc leak at the door gasket on the dry cleaning machine which was measured having a perc concentration level in excess of 50ppm.

8. Regulations at 6 NYCRR 232.7(h) provide that “*A fugitive emission concentration of 50 ppm of perc emanating from any part of the dry cleaning system is a violation; except for short-term maintenance operations involving the opening of dry cleaning system components for inspection or repair.*”

9. Respondents violated regulations at 6 NYCRR 232.7(h) by operating a dry cleaning machine with a component having a fugitive emission concentration greater than 50ppm of perc.

SECOND CAUSE OF ACTION

10. On May 31,2013, the Department received the compliance report, submitted by Respondent, which indicated that the maximum perc concentration levels in the drum at the end of the dry cleaning cycle for Load #1 and #2 were above 300 ppm. Actual readings in the drum at the end of the cycle were between 750 and 900ppm.

11. Regulations at 6 NYCRR 232.6(a)(6) provide that “*A secondary control system must:*

(i) Be designed to function with a primary control system complying with all requirements for third generation equipment.

(ii) Be capable of reducing the perc concentration in the drum from 8600 ppm or greater to 300 ppm.

(iii) Any integral carbon adsorber used as a secondary control system must be sized correctly for the machine and be capable of reducing the perc concentration in the drum from 8,600 ppm or greater to 300 ppm or less.

(iv) The integral carbon adsorber must be designed for non-contact steam or hot air stripping operation, and must be stripped or desorbed in accordance with manufacturer's instructions or at least weekly, whichever is more stringent.

12. Respondents violated regulations at 6 NYCRR 232.6(a)(6) by operating a dry cleaning machine with a maximum perc concentration level greater than 300ppm measured in the drum, at the end of the dry cleaning cycle.

Civil Penalty

13. ECL Section 71-2103 provides that any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto; or any order except an order directing such person to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

Waiver of Hearing

14. 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 the terms, provisions and conditions contained herein.

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

I. Civil Penalty

With respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND THREE HUNDRED AND SEVENTY FIVE DOLLARS (\$2,375) is hereby assessed against the Respondent of which ONE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS (\$1,375) 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. The balance ONE THOUSAND DOLLARS (\$1,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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

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. Settlement

Timely payment of the civil penalty called for above and full compliance with the terms and conditions of this Order and Schedule of Compliance is accepted as full settlement of the violations described above.

III. Communications

All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Engineer.

IV. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL. The Department monitor shall have, at his discretion, full and unrestricted access to Respondent's records, and employees to discuss or inquire about all state, federal and Order on Consent compliance matters, and complaints.

V. Summary Abatement

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.

VI. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

VII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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.

VIII. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

IX. Document Review

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

c. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

X. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XI. Termination Date

This Order shall terminate upon the Respondent's compliance with all the terms, conditions and provisions of this Order and Schedule of Compliance.

DATED: 8/12/2013
Rotterdam, NY

Joseph J. Martens
Commissioner
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 its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Colonial Cleaners, LLC

SIGNED: Neil Levine

TITLE: Owner

DATE: 8/8/13

STATE OF NY

COUNTY OF Albany) ss.:

On the 8th day of August in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Neil A Levine 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.

Kathryn S. Powers

Notary Public

Qualified in the County of: Saratoga

My Commission Expires: 12/12/2014

KATHRYN S. POWERS
Notary Public, State of New York
Certified in Saratoga County
Reg. No. 01PO5036899
Commission Expires 12/12/20 14

SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Respondent shall submit to the Department, a list of all remedial measures performed to remedy the aforementioned violations so as to operate the sources in a manner compliant with the regulations.
2. Compliance with this Schedule of Compliance shall not be a defense to any future occurrences of the violations cited in this Order.