

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
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**CERTIFIED - RETURN RECEIPT REQUESTED**  
7013 1090 0002 3365 0020

November 7, 2016

Mr. David Delong  
Distribution Center Manager  
Delhaize America Distribution Inc.  
970 Route 9 Mail Sort 9020  
Schodack Landing, NY 12156

Re: Order on Consent  
R4-2016-0804-136

Dear Mr. Delong:

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

This will also acknowledge receipt of \$25,020 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: H. Brezner



Department of  
Environmental  
Conservation

5STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Article 27,  
Title 9 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT  
File No. R4-2016-0804-136

Delhaize America Distribution, LLC  
970 Route 9  
Schodack Landing, New York 12156

Respondent  
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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for regulation of hazardous waste management pursuant to Article 27, Title 9 of the Environmental Conservation Law (the "ECL").
2. On June 17, 2016, Department staff performed an inspection ("inspection") of Delhaize America Distribution, LLC located at 970 Route 9, Schodack Landing, New York ("facility"). The facility has EPA Identification Number NYR000220525.

First Violation

3. Regulations at 6 NYCRR § 372.2(a)(8)(iii) allows the generator who generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste in a calendar month to accumulate less than 6,000 kg on-site provided the following requirements are met:

- the name and phone number of the emergency coordinator must be posted next to the telephone.

4. At the time of the inspection, the telephone number and the name of the emergency coordinator was not posted next to the telephone which is in violation of regulations of 6 NYCRR § 372.2(a)(8)(iii).

Second Violation

5. Regulations at 6 NYCRR § 372.2(a)(8)(iii) allows the generator who generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste in a calendar month to accumulate less than 6,000 kg on-site provided the following requirements are met:

- the location of fire extinguishers and spill control material and, if present, fire alarm, must be posted next to the telephone.

6. At the time of the inspection, the location of the emergency equipment was not posted which is in violation of regulations at 6 NYCRR § 372.2(a)(8)(iii).

#### Third Violation

7. Regulations at 6 NYCRR §372.2(b)(5)(i) require a generator to not offer a shipment of hazardous waste for transport off-site without an accompanying manifest.

8. At the time of the inspection, Department staff determined that Respondent's facility has two part washers serviced by Safety Kleen. The solvent from one of these part washers, when determined to be waste is a hazardous waste. However, all shipments have been accompanied by Bills of Lading and not a hazardous waste manifest, which is in violation of regulations at 6 NYCRR §372.2(b)(5)(i).

#### Fourth Violation

9. Regulations at 6 NYCRR §372.2(b)(1) requires a generator who transports or offers for transportation, hazardous waste, to prepare a manifest according to the Manifest Instructions included in Appendix 30 of this Title.

10. At the time of the inspection, Department staff determined that manifests 007210737FLE (13/3/15) and 007403036FLE (9/1/15) were missing the generators' telephone number, which is in violation of regulations at 6 NYCRR §372.2(b)(1).

#### Fifth Violation

11. Regulations at 6 NYCRR §372.2(b)(2)(i) require that the generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that is authorized to handle the particular hazardous waste described on the manifest.

12. At the time of the inspection, Respondent was unable to produce any documents to establish that Northland Environmental and Safety Kleen were authorized to accept hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(i).

#### Sixth Violation

13. Regulations at 6 NYCRR §372.2(b)(2)(iii) require that the generator confirm by written communication that the designated transporter is authorized to deliver the waste to the facility on the manifest.

14. At the time of the inspection, Respondent was unable to produce any documents to establish that 21<sup>st</sup> Century Environmental Management LLC of RI and Safety Kleen were authorized to transport hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(iii).

### Seventh Violation

15. Regulations at 6 NYCRR §373-3.3(g)(1) require that the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services for these organizations:

- arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries and illnesses which could result from fires, explosions, and releases at the facility.

16. Respondent failed to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the type of injuries/illnesses which could result from fire, explosions and releases at the facility, which is in violation of regulations at 6 NYCRR §373-3.3(g)(1).

### Eighth Violation

17. Regulations at 6 NYCRR §374-2.3 (c)(8)(i) requires containers and aboveground used oil tanks used to store oil at generator facilities to be clearly labeled or marked with the design capacity and working capacity of the tank and with the words "*Used Oil*."

18. At the time of the inspection, Department staff determined that the single 55 gallon drum in the maintenance area was not labeled with the words "*Used Oil*" which is in violation of regulations at 6 NYCRR §374-2.3 (c)(8)(i). On June 20, 2016, the company returned to compliance by emailing a picture which established that the drum had been labeled.

### Ninth Violation

19. Regulations at 6 NYCRR §374-2.3(c) requires used oil generators to comply with applicable spill prevention, control and countermeasures (40 CFR Part 112, as incorporated by reference in Section 370.1(e) of this Title) including:

- A SPCC ("Spill Prevention, Control and Countermeasures) Plan.

20. At the time of the inspection, Department staff determined that the facility had a SPCC plan but it was missing items including the current owner's name and address; updated contact list; evidence of a 5-year review; a signature of the New York registered professional engineer who prepared the plan; a signature of the manager approving the plan; a description and diagram of the physical layout; inaccurate information about the history of spills; inaccurate information as to who does the monthly inspections; missing appendices; facility response plan; training information; and the name, title and telephone number of the person who is responsible for spill prevention, all of which is in violation of regulations at 6 NYCRR §374-2.3(c).

### Tenth Violation

21. Regulations at 6 NYCRR §374-2.3(c) requires used oil generators to comply with all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112, as incorporated by reference in Section 370.1(e) of this Title) including:

- Secondary containment for ASTs and at loading/off-loading areas for rail road tank cars and tanker trucks.

22. At the time of the inspection, Department staff determined that the truck loading area does not have secondary containment, which is in violation of regulations at 6 NYCRR §374-2.3(c).

#### Eleventh Violation

23. Regulations at 6 NYCRR § 374-2.39(c)(8)(i) require that aboveground storage tanks must be clearly labeled or marked with their design and working capacities and the words “Used Oil.”

24. At the time of the inspection, Department staff determined that the tank was not labeled with the words “Used Oil” which was in violation of regulations at 6 NYCRR § 374-2.39(c)(8)(i). On June 20, 2016, the company returned to compliance by emailing a picture to establish that the tank had been labeled.

#### Twelfth Violation

25. Regulations at 6 NYCRR § 376.1(g)(1)(ii) requires generators of waste that do not meet the treatment standard to send a one-time written notice with the initial shipment to each treatment or storage facility and place a copy in their files. The notice must include the following information:

- The constituents of concern for F001-F005, and F039, and underlying hazardous constituents (for wastes that are not managed in a Clean Water Act (“CWA”) or CWA-equivalent facility), unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.

26. At the time of the inspection, Department staff determined that the Land Disposal Restriction notifications associated with all of the manifest did not deal with the underlying hazardous constituents for the D001 waste listed on all of the manifests which is in violation of regulations at 6 NYCRR § 376.1(g)(1)(ii).

#### Thirteenth Violation

27. Regulations at 6 NYCRR §376.1(g)(1)(ii) require generators of waste that do not meet the treatment standard to send a one-time written notice with the initial shipment to each treatment or storage facility and place a copy in their files. The notice must contain the following information:

- Applicable wastewater/non-wastewater category and subdivisions made within a waste code based upon specific waste-specific criteria (such as D003 reactive cyanide).

28. At the time of the inspection, Department staff determined that the Land Disposal Restriction notifications associated with all of the manifests did not indicate the subcategories for the D001 waste listed on all of the manifests, which is in violation of regulations at 6 NYCRR §376.1(g)(1)(ii).

#### Fourteenth Violation

29. Regulations at 6 NYCRR §374-3.2(d)(4)(i) require that the handler must place all universal waste lamps in a container that is closed, structurally sound, adequate to prevent breakage, compatible with the contents, and must lack evidence of leakage, spillage, or damage.

30. At the time of the inspection, Department staff determined that both containers holding used bulbs in the maintenance area were open despite no bulbs being added or removed from the containers, which is in violation of regulations at 6 NYCRR §374-3.2(d)(4)(i).

#### Fifteenth Violation

31. Regulations at 6 NYCRR §374-3.2(e)(5) require that each lamp or containers or package containing lamps are clearly labeled or marked with any one of the following phrases: “*Universal Waste – Lamp(s)*,” or “*Waste Lamp(s)*,” or “*Used Lamp(s)*.”

32. At the time of the inspection, both containers holding used bulbs in the maintenance area were not labeled with the appropriate words, which is in violation of regulations at 6 NYCRR §374-3.2(e)(5).

#### Sixteenth Violation

33. Regulations at 6 NYCRR §374-3.2(f)(3) require that a handler must be able to demonstrate the length of time that the universal waste has been accumulated by marking the date, maintaining an inventory, or any other method.

34. At the time of the inspection, Department staff determined that both containers holding used bulbs in the maintenance area were not marked with an accumulation start date, which is in violation of regulations at 6 NYCRR §374-3.2(f)(3). Respondent had no other way of indicating how long the used bulbs had been stored.

#### Civil Penalties

35. ECL Section 71-2705(1) provides for a maximum civil penalty of \$37,500 for the first day of a violation and each day thereafter of a regulation promulgated under Title 13 of ECL Article 27.

#### Waiver of Hearing

36. The Respondent hereby consents to the issuance and entry 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.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Civil Penalty

With respect to the aforesaid alleged violation, a civil penalty in the amount of FORTY ONE THOUSAND SEVEN HUNDRED DOLLARS (\$41,700) is hereby assessed against the Respondent of which TWENTY FIVE THOUSAND TWENTY DOLLARS (\$25,020) 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 SIXTEEN THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$16,680) 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 Department will send Respondent a notice of non-compliance. Respondent will have ten (10) business days to respond to the notice and demand a meeting. After providing said due process (including a meeting, if requested), the Department will issue a written decision stating whether the suspended portion of the penalty is due and payable without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. Indemnification

Respondent shall indemnify and hold harmless New York State, DEC, and any of their representatives, employees or contractors for all claims, actions, damages, and costs of any name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions of this Order by Respondent, their employees, contractors, servants, agents, successors or assigns.

III. Other Remedies

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the following: (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that DEC may have against anyone other than Respondent; (2) DEC's right to enforce, administratively or otherwise, the terms, provisions and conditions of this Order against Respondent, its employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof, and to subject Respondent to penalties for such violations, or for other violations of the ECL; and (3) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law or this Order on Consent.

IV. 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.

V. Effective Date

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

VI. Binding Effect

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

VII. Reports

All reports and submissions herein required shall be made to the Region 4 Headquarters, New York State Department of Environmental Conservation, 1130 North Westcott Road Schenectady, New York, 12306, Att: Regional Hazardous Waste Engineer.

VIII. Inspections

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

IX. Summary Abatement

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.

X. Schedule of Compliance

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

XI. Termination of Order on Consent

This Order on Consent, including the Schedule of Compliance requirements, shall terminate one year after the effective date of this Order on Consent.

Dated: *November 4*, 2016  
Rotterdam, NY

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

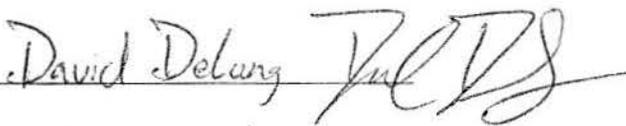


Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Delhaize America Distribution, LLC

BY: David Delang 

TITLE: General Manager

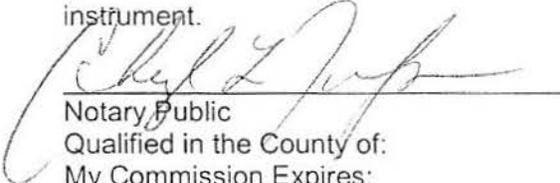
DATE: 11/2/16

STATE OF NEW YORK )

COUNTY OF Rensselaer )ss.:

On the 2 day of Nov in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared David Delang, 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:

Cheryl L. Trefzger  
Notary Public, State of New York  
Qualified in Columbia County  
Reg. No. 01TR6185444  
My Commission Expires April 21, 2020

Schedule of Compliance

1. Within 10 days of the effective date of the Order, Respondent shall post the name of the emergency coordinator and submit to the Department, a picture of the posting.
2. Within 10 days of the effective date of the Order, Respondent shall post the emergency equipment and submit to the Department, a picture of the posting.
3. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that manifests will be used for all of hazardous waste.
4. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all manifests are filled out correctly and completed including the generator's telephone number.
5. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, written documentation establishing that Northland Environmental and Safety Kleen are authorized to accept hazardous waste.
6. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, written documentation establishing that 21<sup>st</sup> Century Environmental Management LLC of RI and Safety Kleen are authorized to transport hazardous waste.
7. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, the names of hospitals that Respondent has made arrangements with and specific details about those arrangements.
8. Violation No. 8 requires no action.
9. Within 30 days of the effective date of the Order, Respondent shall submit to the

### Schedule of Compliance

1. Within 10 days of the effective date of the Order, Respondent shall post the name of the emergency coordinator and submit to the Department, a picture of the posting.
2. Within 10 days of the effective date of the Order, Respondent shall post the emergency equipment and submit to the Department, a picture of the posting.
3. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that manifests will be used for all of hazardous waste.
4. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all manifests are filled out correctly and completed including the generator's telephone number.
5. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, written documentation establishing that Northland Environmental and Safety Kleen are authorized to accept hazardous waste.
6. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, written documentation establishing that 21<sup>st</sup> Century Environmental Management LLC of RI and Safety Kleen are authorized to transport hazardous waste.
7. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, the names of hospitals that Respondent has made arrangements with and specific details about those arrangements.
8. Violation No. 8 requires no action.
9. Within 30 days of the effective date of the Order, Respondent shall submit to the Department, a Spill Prevention, Control, and Countermeasure Plan ("SPCC") that addresses all of the applicable requirements of 40 CFR 112.
10. Within 30 days of the effective date of the Order, Respondent shall submit to the Department, documentation that secondary containment has been installed for the used truck loading area.
11. Violation No. 11 requires no action.
12. Within 30 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all of its Land Disposal Restriction notifications will deal with all underlying hazardous constituents ("UHCs") by either indicating that there are no UHCs and listing what those constituents are on the notifications.
13. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all of its Land Disposal Restriction Notifications

will list the subcategories for all EPA waste codes included on the notifications.

14. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all containers holding universal waste lamps are closed unless lamps are being added or removed from the container.
15. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all containers holding universal waste are labeled with the appropriate words.
16. Within 10 days of the effective date of the Order, Respondent shall submit to the Department, a procedure to ensure that all containers holding universal waste are marked with an accumulation start date when the first battery or lamp is placed in the container.