

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3818

October 31, 2013

Lora Mosher
Fiber Glass Industries, Inc
69 Edson St.
Amsterdam, NY 12010

Re: Order of Consent
Fiber Glass Industries, Inc
R4-2013-1004-121

Dear Ms. Mosher:

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

This will also acknowledge receipt of \$16,000 the civil penalty pursuant to Paragraph I.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: A. Elliot

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

In the Matter of Violations of Article 27,
Title 13 of the Environmental Conservation Law;
by

ORDER ON
CONSENT

File No.
R4-2013-1004-121

Fiber Glass Industries, Inc.
69 Edson St.
Amsterdam, NY 12010

Respondent.

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for regulation of hazardous waste management pursuant to Article 27, Titles 13 of the Environmental Conservation Law (the "ECL").
2. On July 16, 2013, Department staff conducted an inspection at Respondent, Fiber Glass Industries, Inc., facility located at 69 Edson Street, Amsterdam, New York 12010 to determine compliance with federal and state hazardous waste regulations ("facility") The facility is a generator of hazardous waste and operates pursuant to EPA ID Number: NY0000202036.
3. The facility is also subject to a Clean Water Act Multi-Sector General Permit for Storm Water from an Industrial Activity (GP-0-12-001)(effective October 1, 2012) ("MSGP"). In New York, EPA has approved the state program which is enacted through the administration of the State Pollutant Discharge Elimination System (SPDES) program. Industrial facilities engaged in activities defined in 40 CFR 122.26(b)(14)(i-ix) and (xi) must obtain permit coverage for storm water discharges to waters of the United States through either an individual industrial SPDES permit, the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, or provide certification using the No Exposure Exclusion that industrial activities are not exposed to storm water.

4. Part III. A of the MSGP provides that: “A stormwater pollution prevention plan (SWPPP) shall be developed and implemented by the *owner or operator* for each facility covered by this permit.... The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of *stormwater discharges associated with industrial activity* from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to *minimize the pollutants in stormwater discharges associated with industrial activity* at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the SWPPP.”

5. Part III. E. 2 of the MSGP requires that the SWPPP be modified “when It is found to be ineffective in eliminating or significantly minimizing pollutants...”

6. The facility is also subject to specific requirements based on its industrial category. The facility is subject to the industrial category requirements in Sector E of the MSGP. MSGP Sector E inspection requirements include the following areas:

Material handling areas;
Aboveground storage tanks;
Hoppers or silos;
Dust collection/containment systems; and
Truck wash down/equipment cleaning areas

7. MSGP Sector E housekeeping practice requirements include: Facilities shall prevent the exposure of fine granular solids (such as cement, kiln dust, etc.) to stormwater. Where practicable, these materials shall be stored in enclosed silos or hoppers, buildings, or under other covering.

Hazardous Waste Violations from Inspection

8. On August 9, 2013, Respondent was mailed a notice of violation setting forth the violations observed during the Department's July 16, 2013 inspection ("inspection").
9. Regulations at 6 NYCRR Part 372.2(b)(2)(ii) requires that the generator, for each hazardous waste listed in Box 9 of the manifest, confirm with the designated facility what the ultimate disposal method will be for that waste. If the receiving facility does not provide a hazardous waste management code in Box 19 of the manifest that reflects the ultimate disposal method for the hazardous waste, the generator must provide a State waste code in Box 13 of the manifest to designate the ultimate disposal method of the hazardous waste using one of following state codes:
- L = Landfill
 - B = Incineration, heat recovery, burning
 - T = Chemical, physical, or biological treatment
 - R = Material recovery of more than 75 percent of the total material

During the inspection Department staff observed that two manifests were incorrectly coded in Box 13. They were manifest 003543203FLE (12/08/11) and manifest 001527428FLE (1/29/10). The 12/8/11 manifest failed to identify the disposal method of "T" and the 1/29/10 manifest failed to identify the disposal method as "B." Respondent violated 6 NYCRR 372.2(b)(2)(ii) by failing to identify the disposal method in the two manifests.

10. Regulations at 6 NYCRR Part 372.2(b)(3) requires generators to distribute copies of the manifest as specified on the manifest forms postmarked within five (5) business days of shipment date.

During the inspection Department staff observed that manifest 001502151FLE (05/29/13) was on file at the facility but not in the state's database system. On the day of inspection, no proof was provided that the manifest was mailed to the state. Respondent violated 6 NYCRR 372.2(b)(3) by failing to mail the manifest within five business days of shipment.

11. Regulations at 6 NYCRR 372.2(c)(1)(i) requires the generator to retain signed copies of the manifest records at the facility for at least three years.

During the inspection Department staff observed that manifests 003543326FLE and 003543329FLE (6/4/12), and manifest 003543334FLE (6/15/12) (relating to the sodium hydroxide tank clean-out) were not on file. The tank clean out contractor provided copies of the three manifests to the generator who emailed copies to the Department on July 22, 2013. A copy of manifest 001527428FLE (1/29/10 [which is more than 3 years so we may lose this one]) was not on file or provided after the inspection. Other manifests which could not be found during

the inspection were located after the inspection and confirmed by email on July 17, 2013 to the Department. Respondent violated 6 NYCRR 372.2(c)(1)(i) by not maintaining manifests at the facility for three years.

12. Regulations at 6 NYCRR 373-3.2(g)(1),(2), and (3) requires that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Subpart. In addition, the owner or operator must ensure that facility personnel take part in an annual review of the initial training required.

During the inspection Department staff was told that facility personnel have not had their annual review of their initial required training for at least the past two years. At least two of the Respondent's employees, who sign the manifests, have not successfully completed any type of RCRA related training and Department of Transportation training as required by 49 CFR Part 172, Subpart H. Respondent violated regulations at 6 NYCRR 373-3.2(g)(1),(2), and (3) by failing to provide facility personnel with required training.

13. Regulations at 6 NYCRR 373-3.3(b) requires a facility to be operated and maintained to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water which could threaten human health or the environment.

During the inspection Department staff observed that the Respondent failed to minimize the release of hazardous constituents by not immediately cleaning the pollution control dust from the tops of the one ton nylon bags and the containment system where it could blow away, get knocked off during transfer to the five ton roll-off, or dragged out by employees during transfer to the five ton roll-off. Dust was also visible within the containment system and could exit the containment system through an open drain that led to a storm sewer. Respondent violated 6 NYCRR 373-3.3 (b) by failing to minimize the release of hazardous contaminants.

14. Regulations at 6 NYCRR 373-3.4(c) requires that the facility's Contingency Plan must list names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date. Where more than one person is listed, one person must be named as primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternates.

During the inspection Department staff observed that the home addresses for the emergency coordinators were not provided in the Contingency Plan. Respondent violated the regulations at 6 NYCRR 373-3.4(c) by failing to list the addresses of the emergency coordinators.

15. Regulations at 6 NYCRR Part 373-3.4(e) requires the Contingency Plan must be reviewed, and immediately amended, if necessary, whenever the list of emergency coordinators changes.

During the inspection Department staff observed that the Contingency Plan was last updated in 2010. The Contingency Plan contained the name of an employee who was no longer under the employ of the Respondent and therefore could not be listed as the primary emergency coordinator. Respondent violated the regulations at 6 NYCRR 373-3.4(e) by failing to amend the list of emergency coordinators.

16. Regulations at 6 NYCRR 374-3.2(d)(4)(i) requires that the handler must place 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.

During the inspection Department staff observed that two boxes of universal waste lamps were left open despite instructions to close them being posted in the area because of previous violations. Respondent violated 6 NYCRR 374-3.2(d)(4)(i) by maintaining two open boxes of universal waste lamps.

17. Regulations at 6 NYCRR 374-3.2(f)(1) prohibits the accumulation of universal waste for more than one year from the date the waste is generated or received.

During the inspection Department staff observed that the two open boxes of universal waste lamps were dated 10/18/11 and 2/22/12. Respondent violated 6 NYCRR 374-3.2(f)(1) by accumulating universal waste for more than one year from the date the waste was generated.

Civil Penalties

18. 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

19. 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

Respondent is hereby assessed a civil penalty in the amount of TWENTY-SIX THOUSAND DOLLARS (\$26,000) for the violations stated herein. SIXTEEN THOUSAND DOLLARS (\$16,000) of the civil penalty is to be paid by bank check made payable to the Department of Environmental Conservation and returned with the signed and notarized Order. TEN THOUSAND DOLLARS (\$10,000) of the civil penalty is suspended conditioned upon Respondent's timely compliance with the Order's Schedule of Compliance. Payment of the suspended penalty is due within TEN (10) calendar days of Respondent's receipt of a Notice of Violation setting forth the specific violations of the Schedule of Compliance.

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, his 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) DEC's right 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; or (5) 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.

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 is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

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 order to inspect and/or require such tests as may be deemed necessary to determine the status of the Respondent's compliance with this Order and applicable ECL laws and regulations.

IX. Summary Abatement

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

Date: ~~November~~ , 2013

October 31

Joseph Martens

Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

SCHEDULE OF COMPLIANCE

1. Within 30 days of the Order, Respondent shall, weather permitting, coat the inside of both hazardous waste containment systems with an impermeable coating and provide proof that work has been completed.
2. Within 30 days of the Order, Respondent shall conduct an evaluation of the adequacy of its MSGP SWPPP and submit to the Department for review and approval amendments that address at a minimum:
 - (a) changing out the roll-off and super sacs without the release of any hazardous contaminants that may enter the storm water and
 - (b) other process areas that may have the potential for hazardous contaminants entering the storm water.
3. Within 30 days of the Order, submit to the Department for review and approval, standard procedures to regularly clean the containment system of any accumulated hazardous contaminant dust and liquids and to properly dispose of the waste. The procedures shall be implemented upon receiving the Department's approval.