

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violation of Environmental Conservation Law,
Article 19

ORDER ON CONSENT

- by -

File No. R4-2009-0910-148

Medical Coaches, Inc.
399 County Route 58 (Hemlock Road)
Milford, New York

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, Medical Coaches, Inc., owns and operates a spray painting operation at their facility at 399 County Route 58 (Hemlock Road) Milford, New York that consists of two surface coating booths and associated emission points. ("facility").
3. On May 27, 1997, the Respondent submitted an Exempt and Trivial Activities Form to the Department indicating that the two surface coating booths with filters and associated emission points were exempt under 6 NYCRR 201.3.2(c)(17) because the operations used less than 25 gallons per month of coating materials and cleaning solvent.
4. On July 22, 2009 and August 27, 2009, Department inspected the facility and reviewed the paint usage records and determined that the facility uses approximately 160 gallons per month and that the facility needs to be either registered or permitted.
5. The Respondent is required to maintain required records on site for a period of five years and make them available to Department staff as required in 6 NYCRR 201-7.3(f).
6. Respondent's operation of the spray paint booths utilizing more than 25 gallons of paint and solvent from 2004-2009 without either a registration or permit are and continue to be violations of 6 NYCRR 201-1.1(b).
7. ECL Section 71-2103(1) provides that: "Except as provided in section 71-2113, 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.”

8. 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. In respect of the aforesaid violations, a civil penalty in the amount of TWO THOUSAND SIX HUNDRED DOLLAR (\$2,600) is assessed against the Respondent for the above violation. Payment of the civil penalty is due with the return of the signed and notarized Order to the Department.

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, its 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, his employees, his servants, his agents, his successors or his 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, his agents, his servants, his employees, his successors and his 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

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

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1 Within thirty (30) days of the effective date of the Order, the Respondent shall submit a permit/registration application to the Department for the facility in accordance with 6 NYCRR Part 201. The emission sources and facility are subject to all regulations that were applicable at the time of construction or modification and any subsequent requirements applicable to existing sources or facilities. The Respondent shall also review the applicability of the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations including 40 CFR 63, Subpart HHHHHH (Miscellaneous Surface Coating Operations) and 40 CFR 63, Subpart XXXXXX (Metal Fabrication and Finishing Source Categories) to determine if any of the regulations apply to the facility. Respondent shall take whatever actions are required in accordance with that applicability review.