

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of violations of
Navigation Law Article 12 and
Environmental Conservation Law
(ECL) Article 17

ORDER ON CONSENT

File No. R4-2007-1214-173

- by -

Moment Metals, LLC

Respondent

WHEREAS:

JURISDICTION

1. New York State Department of Environmental Conservation ("DEC") has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 12 of the Navigation Law ("NL") and Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated pursuant thereto.

FACTS

2. Respondent, Moment Metals LLC, owns "Hudson Metal Recycling," a metal recycling facility at 11 North Ferry Street, Albany, New York ("facility").

3. Respondent is a "person" as defined in Section 17-0105 of the ECL and Section 172 of the NL.

4. On February 10, 2006, the presence of a contamination was called into the NYS Emergency Spill Hotline (Spill No. 0513058).

5. A report dated June 12, 2006 was submitted to the Department, indicating that sampling of the site identified the presence of polychlorinated biphenyls ("PCBs") heavy metals, volatile organic compounds ("VOC's") and semi-volatile organic compounds ("SVOC's") in the surface and subsurface soils and groundwater on the site.

DISCHARGE OF PETROLEUM

6. Section 173 of the NL prohibits the discharge of petroleum.

7. Respondent discharged petroleum at the facility.

8. Respondent's discharge of petroleum at the facility is a violation of Section 173 of the NL.

FAILURE TO IMMEDIATELY CLEAN UP

9. Section 176.1 of the NL requires that any person discharging petroleum must immediately undertake to contain the discharge.
10. Respondent failed to immediately contain the discharge.
11. Respondent's failure to immediately contain the discharge is a violation of Section 176.1 of the NL.

GROUNDWATER VIOLATIONS

12. Section 17-0501 of the Environmental Conservation Law provides that: "It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters (waters of the State of New York) organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to Section 17-0301."

13. The spill reached the groundwater. The Phase II Environmental Investigation detected VOC's in the subsurface soil and groundwater at the B-9, B-10, B-11 & B-12 locations and SVOC's at the subsurface soil and groundwater at B-9, B-10, B-11 & B-12 locations.

14. The groundwater contamination detected was in contravention of the standards adopted by the Department pursuant to Section 17-0301.

VOC	Sample Result	Standard
Ethylbenzene	15.7 ug/L	5 ug/L
1,2,4 Trimethylbenzene	15.8 ug/L	5 ug/L

15. The spill into the groundwater is a violation of ECL Section 17-0501.
16. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 thru 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.
17. 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 of not more than twenty-five thousand dollars (\$25,000) for each offense.

WAIVER

18. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law, has consented to the issuance and entry of this Order, and agrees to be bound by the terms, provisions and conditions contained herein.

REMEDIES

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

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500), of which SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250) which 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 of the civil penalty (\$6,250) shall be suspended and not payable if Respondent timely completes 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.

II. Schedule of Compliance

The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order on Consent and enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, contact and phone number.

III. Force Majeure

Respondent shall not be in default of compliance with this Order if it is unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war, strike, riot or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify DEC in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

IV. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Spill Engineer. All submittals shall have the following information: owner's name, facility name and address.

V. 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.

VI. 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.

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. Review of Submittals

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.

4. 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.

IX. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

X. Modification

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.

XI. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XII. Effective Date

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

XIII. Reservation of Rights

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 violation of the ECL, rules or regulations promulgated 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 officers, directors, 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 directors, officers, 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.

DATED: _____, 2008
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 15 days of the effective date of this Order, the Respondent shall submit to the Department for approval, a subsurface investigation work plan. The purpose of the subsurface investigation is to completely characterize the site and to delineate the extent and magnitude of the contamination originating from the site. The workplan is to include a health and safety plan as well as a time schedule, indicating when each aspect of the investigation will be completed. The Department shall either approve or disapprove the plan in writing. If the plan is disapproved, the Department shall specify any deficiencies and required modifications. Within 30 days of the Department's disapproval notice, the Respondent shall submit to the Department, a revised plan which addresses the Departments comments, correcting any deficiencies identified in the disapproval notice.
2. Within 30 days of the Department's notice of approval of the subsurface investigation workplan as described in paragraph 1 above, the Respondent shall implement the approved plan.
3. Within 60 days of the completion of the field work portion of the subsurface investigation workplan, the Respondent shall submit to the Department, a Report containing all of the data and information gathered during the investigation including: scaled site maps, groundwater contour maps, analytical data tables, a discussion of results and recommendations for further action. The Department shall respond to the 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.
4. The Respondent shall perform quarterly sampling of select monitoring wells utilizing Department specified laboratory analytical methods (which will be dependent on the contaminants found on the site) and continue sampling until at least one year after demonstrating the groundwater at the site meets State groundwater standards in 6NYCRR Part 703.5, or an acceptable alternative as determined by the Department.
5. The Respondent shall maintain and operate the approved, if any, remediation system until such time as the Department approves its suspension or termination.
6. The Respondent shall submit to the Department: quarterly reports containing quarterly monitoring well sampling data, system operation and maintenance data, a groundwater contour map, historical groundwater data in tabular form, mass removal calculations, and a conclusion section discussing the current effectiveness of the remedial efforts and recommendations for future activities.

7. 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.

8. No water discharge as part of this remediation of this site, shall exceed groundwater standards.

9. To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number.

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 bathing areas during the bathing season, shellfishing or public drinking water intakes, must be reported orally within 2 hours from the time Respondent becomes aware of the circumstances. A written report shall be submitted within 5 days and 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. 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 the same information described in paragraph 2 above.
4. 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	1.0 ug/l	1.0 ug/l	"
Ethyl benzene	5.0 ug/l	5.0 ug/l	"
Toluene	5.0 ug/l	5.0 ug/l	"
o-xylene	5.0 ug/l	5.0 ug/l	"
m-xylene	5.0 ug/l	5.0 ug/l	"
p-xylene	5.0 ug/l	5.0 ug/l	"
Mixed Xylenes	5.0 ug/l	5.0 ug/l	"
Napthalene	5.0 ug/l	5.0 ug/l	"
MtBE	10.0 ug/l	10.0 ug/l	"

	FUEL OIL GW EFFLUENT STANDARD	FUEL OIL SW EFFLUENT STANDARD	SAMPLING FREQUENCY
pH Range	6.5 - 8.5	6.5 - 8.5	Monthly
Benzene	1.0 ug/l	1.0 ug/l	"
Ethyl benzene	5.0 ug/l	5.0 ug/l	"
Toluene	5.0 ug/l	5.0 ug/l	"
o-xylene	5.0 ug/l	5.0 ug/l	"
m-xylene	5.0 ug/l	5.0 ug/l	"
p-xylene	5.0 ug/l	5.0 ug/l	"
Mixed Xylenes	5.0 ug/l	5.0 ug/l	"
Napthalene	10.0 ug/l	10.0 ug/l	"
n-Butyl benzene	5.0 ug/l	N/A	"
sec-Butyl benzene	50.0 ug/l	N/A	"
t-Butyl benzene	50.0 ug/l	N/A	"
Anthracene	50.0 ug/l	N/A	"
Dibenz (a,h) anthracene	50.0 ug/l	N/A	"
Flourene	50.0 ug/l	N/A	"
Phenanthrene	50.0 ug/l	N/A	"
Pyrene	50.0 ug/l	N/A	"
Acenaphthene	20.0 ug/l	N/A	"
Benzo (a) anthracene	20.0 ug/l	N/A	"
Benzo (b) fluoranthene	20.0 ug/l	N/A	"
Chrysene	20.0 ug/l	N/A	"
Benzo (a) pyrene	20.0 ug/l	N/A	"
Benzo (g, h, I) perylene	20.0 ug/l	N/A	"
Ideno pyrene	20.0 ug/l	N/A	"
Benzo (k) fluoranthene	20.0 ug/l	N/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)
	10	0.96875
15	25	0.375
	60	0.15625
	100	0.0625
	150	0.0625
	10	1.8125
20	25	0.71875
	60	0.28125
	100	0.1875
	150	0.125
	10	2.84375
25	25	1.125
	60	0.53125
	100	0.28125
	150	0.1875
	10	4.3125
30	25	1.6875
	60	0.71875
	100	0.5
	150	0.28125