

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 3801

October 30, 2013

Lawrence R. Schillinger
Executive Woods
5 Palisades Drive Suite 300
Albany, NY 12205

Re: Order of Consent
N.H. Kelman Inc.
R4-2013-0819-106

Dear Mr. Schillinger:

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

This will also acknowledge receipt of \$5000 the civil penalty pursuant to Paragraph I.

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: ECO Swan
M. Barrie

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Articles 17
of the Environmental
Conservation Law

ORDER ON
CONSENT

File No.
R4-2013-0819-106

By

N.H. Kelman, Inc.
41 Euclid Street
Cohoes, New York 12047

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("DEC") or ("Department") has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated pursuant thereto.
2. Respondent, N.H. Kelman, Inc. owns and operates a scrap metal processing facility at 41 Euclid Street, Cohoes, New York ("site").
3. The New York State Department of Environmental Conservation issued the current version of the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-12-001) ("MSGP").
4. On April 27, 2011, Respondent submitted a Notice of Intent ("NOI") and is subject to the MSGP requirements and sector specific requirements for standard industrial code 5093, Scrap Recycling Facilities.
5. Regulations at 6 NYCRR 750-1.4(b) require that discharges of storm water that are not to groundwater, are required to be pursuant to permit and conducted in accordance with 40 CFR 122.26 and in compliance with a Stormwater Pollution Prevention Plan.
6. Regulations at 40 CFR 122.26 require that discharges of stormwater associated with industrial activity must be authorized by a NPDES /SPDES permit ("permit").

Discharge Violations

7. On May 30, 2013, staff observed contaminated stormwater from Respondent's facility discharging into a drainage swale running parallel to Interstate 787 Northbound. The Respondent upon notification of the discharge hired a contractor who on the day of the discharge removed the discharge from the drainage swale.

8. Respondent's discharge of contaminated stormwater is inconsistent with the Best Management Practices set forth in Respondent's permit obligations pursuant to the Multi-Sector General Permit for Stormwater Discharges from Industrial Sources (GP-2012-001-01) and is a violation of 6 NYCRR 750-1.4(b).

Civil Penalties

9. ECL § 71-1929 provides, among other things, for a civil penalty of up to \$37,500 for violations of the provisions of Article 17 of the ECL cited herein, regulations promulgated there under, and for an additional \$37,500 for each day on which such violations continue, and that such violations may be enjoined.

Waiver of Hearing

10. 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 In respect of the aforesaid violations, a civil penalty in the amount of TWENTY FIVE THOUSAND FIVE DOLLARS (\$25,000) is assessed against the Respondent for the above violations. Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000) to the Department with the return of the signed and notarized Order on Consent. TWENTY THOUSAND DOLLARS (\$20,000) of the civil penalty is suspended conditioned on Respondent's compliance with the terms, conditions and provisions of this Order on Consent and the Schedule of Compliance. Payment of the suspended penalty shall be due within fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets out the violations of the Order. This provision shall not limit the Department's right to seek other remedies provided by law and the applicable regulations for violations of this Order on Consent.

II. Civil Settlement of Violations. This Order is a civil settlement of the violations contained herein.

III. Other Remedies. (a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) the Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous wastes at the site or from areas in the vicinity of the site, as those wastes are defined by applicable regulation; (3) The Department and/or State's right to bring a natural resources damage action; and or (4) 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.

(b) 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.

IV. Indemnification. 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 negligence of Respondents in the fulfillment or attempted fulfillment of the provisions hereof by Respondent, or his employees, servants, agents, successors or assigns.

V. Effective Date. The effective date of this Order shall be the date it is executed by the Regional Director.

VI. Submittals (A) Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

(B) (1) If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

VII. Schedule of Compliance Respondent shall comply with the Schedule of Compliance requirements.

VIII. Access 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.

DATED: Rotterdam, New York
10/30 2013

BY:

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation



Eugene J. Kelly
Regional Director
Region IV

Schedule of Compliance

1. Within 60 days of the effective date of this Order, Respondent shall submit to the Department a modified Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with Part III.E of the MSGP to prevent the type and nature of discharges identified in this Order and to achieve compliance with benchmark monitoring cut-off concentrations in the MSGP for this industrial activity.
2. Within 120 days of the effective date of this Order, Respondent shall implement the modified SWPPP provisions and collect samples at the outfalls during the next qualifying storm event. Sampling results shall be submitted to the Department on the Corrective Action Forms in a timely manner. If the sampling results show exceedences of the benchmark monitoring cut-off concentrations, the Respondent shall further modify its SWPPP to implement additional best management practices and document efforts to meet the benchmark monitoring limits.
3. Compliance with the terms, conditions and provisions of this Order and Schedule of Compliance shall not be a defense to any subsequent unpermitted discharges from this facility.