

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 0350 0000 4246 3757

October 8, 2013

Cynthia S. Scarano
Executive Vice President
Pan Am Railways, Inc
1700 Iron Horse Park
North Billerica, MA 01862

Re: Order on Consent
R4-2013-0606-77

Dear Ms. Scarano:

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: B. Potter
M. Franklin

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Articles
19 and 27
of the Environmental
Conservation Law by:

ORDER ON
CONSENT

File No.
R4-2013-0606-77

Pan Am Railways, Inc.
1700 Iron Horse Park
North Billerica, MA 01862

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department") is empowered to regulate the operation of solid waste management facilities and safeguard the air resources of the state pursuant to ECL Articles 19 and Article 27 of the Environmental Conservation Law "ECL", respectively.
2. Respondent, Pan Am Railways, owns and operates trains that operate on railways located within Glenville, New York.
3. On February 7, 2013, Respondent had a train derailment in Glenville, New York that caused the spill of grain, limestone slurry, and some other foodstuffs. Respondent was informed at the time of the spill by Department staff that the spilled material would need to be removed.
4. On May 31, 2013, Department staff, based on citizen complaints, inspected the area of the February 7, 2013 spill and confirmed the presence of strong odors emanating from a pile of spilled material that had been covered with gray stone/ash type material. The area smelled of decaying organic material. The area has also become habitat for flies and other in sections attracted to the decaying material. Department staff detected the odors from the waste piles at residences located within a 50 feet radius of the location of the spill material.

5. Regulations at 6 NYCRR 211.2 provide that: “No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.”

6. Regulations at 6 NYCRR 360-1.5(a)(2) prohibits the disposal of solid waste except at a disposal facility “authorized to accept such waste for disposal pursuant to this Part ...”.

Solid Waste and Air Violations

7. Respondent has violated regulations at 6 NYCRR 211.2 and 6 NYCRR 360-1.5(a)(2) by disposing of solid waste on the Glenville site and causing from such disposal the emissions of air contaminants of such odiferous characteristic and quantity to unreasonably interfere with the comfortable enjoyment of life.

8. Respondent has affirmatively waived its rights 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 FIVE THOUSAND DOLLARS (\$5,000) is assessed against the Respondent for the above violations. The payment of the civil penalty shall returned with the signed and notarized Order.

II. Respondent shall comply with the attached Schedule of Compliance. The Schedule of Compliance is incorporated and made part of the provisions, terms, and conditions of this Order.

III. Settlement

Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described herein against Respondent.

IV. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

V. Schedule of Compliance

The attached Schedule of Compliance is incorporated into the Order on Consent.

VI. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Engineer.

VII. Access

Respondents 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.

VIII. Indemnification

Respondents 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 Respondents, their directors, officers, employees, servants, agents, successors or assigns.

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

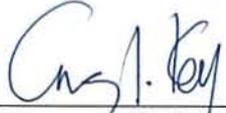
The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed 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 Respondents shall be construed as relieving Respondents of their 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.

DATED: 10/8, 2013
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY: 
Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Pan Am Railways
Authorized Representative

SIGNED: Cynthia S. Scarano
TITLE: Executive Vice President
DATE: 10/07/2013

MASSACHUSETTS)
STATE OF TENNESSEE)
COUNTY OF MIDDLESEX) ss.:

On the 2nd day of October in the year 2013, before me, the undersigned,
personally appeared Cynthia S. Scarano,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at
1700 Ironhorse Park, No. Billerica, MA 01802
(Full mailing address)

and that he/she/they is (are) the Executive Vice President
(President or other officer or director or attorney in fact duly appointed)

of the Pan Am Railways
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Pamela J. Hitchcock
Notary Public, Commonwealth of Massachusetts



SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall remove all spilled material and cover material placed on the spill material and transport it to a permitted landfill or transfer station. Respondent shall provide the Department with receipts showing proper disposal of the solid waste. Respondent shall grade, seed and mulch the area where the solid waste is removed to avoid erosion.