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May 30, 2019

VIA OVERNIGHT SERVICE

Benjamin Conlon, Esq.
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, New York 12233-1500

MAY 31 2019
EE:

Re: Stauffer Management Company
Lewiston, New York
Order on Consent No. CO 1-200181004

Dear Mr. Conlon:

This firm represents Stauffer Management Company LLC ("SMC") in the above-referenced matter. Enclosed is one original version of the Order on Consent duly executed on behalf of SMC. Kindly arrange for execution by the Department and return a copy of the fully executed order to me. An electronic version will be sufficient. Upon receipt we will arrange for SMC to process the payment of the civil administrative penalty.

If the enclosure is not as stated, or anything further is required of SMC at this time, please contact me.

Thank you for your time and assistance in resolving this matter.

Sincerely,



Edward F. McTiernan

cc: Maureen Brady, Esq. - NYSDEC Region 9
John-Paul Rossi - SMC
J. Wylie Donald, Esq. - McCarter & English for SMC
(all via e-mail only w/o enc.)

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violations of Article 27
of the New York State Environmental Conservation Law,
and Title 6 of the Official Compilation of Codes, Rules
and Regulations of the State of New York

**ORDER ON CONSENT
Case No. CO 1-20181004
EPA ID No. NYD982796906**

- By -

STAUFFER MANAGEMENT COMPANY LLC,
Respondent.

-----X
WHEREAS:

Parties and Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is vested with jurisdiction to enforce laws governing hazardous waste management pursuant to Article 27, Title 9 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").
2. This Order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
3. Respondent, Stauffer Management Company LLC ("Respondent"), is a corporation authorized to do business in New York State. (Collectively the Department and Respondent are referred to as the "Parties.")
4. Respondent is performing remediation at a facility at 5715 Old Lewiston Road (also known as 5607 Old Lewiston Road), Lewiston, NY ("Facility"). The Facility is listed as a Class 4 site on the registry of inactive hazardous waste sites as Site No. 932053.
5. Respondent is a person, owner, and operator as defined pursuant to 6 NYCRR 370.2(b)(136); 6 NYCRR 370.2(b)(137); and 6 NYCRR 370.2(b)(141).
6. Respondent was issued an EPA Id No. NYD982796906 on October 31, 1989.

Applicable Law

7. Respondent is subject to New York State laws, rules and regulations governing solid and hazardous waste, specifically Article 27 of the ECL and the regulations promulgated thereunder.

8. EPA's rules governing waste determinations are incorporated by reference into the Department's waste determination regulations by 6 NYCRR 370.1(e)(2)(iii)(c)1.

9. 40 CFR 262.11(c) provides that when making a waste determination, a generator must "use knowledge of the waste to determine whether the waste meets any of the listing descriptions . . . Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information."

Facts

10. Respondent's remediation activities at the Facility generate spent activated carbon and related solid waste (the "Waste").

11. On April 20, 2018, the Facility was inspected by authorized employees of the Department.

12. On April 23, 2018, Department staff issued a Notice of Violation ("NOV") to Respondent identifying that Respondent's remediation of the Facility results in the generation and storage of hazardous waste as defined in ECL § 27-0901(3) and Parts 370 and 371 of 6 NYCRR.

13. On October 12, 2018, Respondent submitted supplemental information regarding the origin, composition and the process producing the Waste and other information that it relied upon in making determinations about the classification of the Waste.

14. Thereafter, the Parties met on several occasions and Respondent submitted additional information in support of its waste determination. During these meetings, and based upon Respondent's supplemental submissions, including without limitation its October 12, 2018 submission, the Parties mutually concluded that the Waste is not characteristically hazardous within the meaning of 6 NYCRR 371.4 and that Respondent has diligently discharged any obligations pursuant to 6 NYCRR 372.2(a)(2) to investigate the source of the Waste.

15. Despite Respondent's alleged violation of 6 NYCRR Part 372.2(b)(1), discussed below, the Department has concluded that the waste referenced or otherwise covered by the NOV was delivered to a duly licensed treatment, storage or disposal facility authorized to receive the Waste.

16. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by, Article 27, Title 9, 11, or 13 or any rule

or regulation promulgated thereto, shall be liable for penalties of up to \$37,500 per day per violation.

The Department's Contentions

17. The Department contends that Respondent improperly failed to conclude that the Waste is from a listed source and therefore Respondent's classification of the Waste as non-hazardous solid waste constituted a violation of 6 NYCRR Part 372.2(b)(1).

Respondent's Contentions

18. Respondent contends that it has diligently discharged any obligation to investigate the source of the Waste pursuant to 6 NYCRR 372.2(a) and that based upon that investigation it has properly classified the Waste as non-hazardous solid waste.

No Adjudication of Facts or Law

19. Since issuing the NOV, the Department has not taken any action to commence an administrative proceeding, serve a notice of hearing or serve a complaint pursuant to 6 NYCRR 622.3.

20. Neither the Commissioner nor the Commissioner's designee has made any findings of fact concerning the Parties' contentions. There has been no adjudication of any of the legal issues raised by the NOV and the Respondent has not admitted any liability.

21. Nevertheless, the Parties wish to avoid the cost, inconvenience and uncertainty associated with litigating the issues presented in the NOV or otherwise covered by this Order.

22. Accordingly, the Department affirmatively waives the right to commence an administrative proceeding and Respondent affirmatively waives its right to a hearing in this matter and the Parties consent to the issuance of this Order and agree to be bound by the terms, provisions and conditions contained herein.

NOW, THEREFORE, HAVING CONSIDERED THIS MATTER AND BEING DULY ADVISED, IT IS ORDERED THAT:

I. COMPLIANCE

A. Within thirty (30) days of the Department's execution of this Order, Respondent shall begin designating the Waste as a "U" source listed hazardous waste and/or a "P" sources listed hazardous waste, as those terms are defined at 6 NYCRR 371.4 and 40 CFR 261.31, then thereafter it shall manage the Waste accordingly.

B. The Department shall not contest any determination by Respondent to designate and treat the Waste as a "U" source listed hazardous waste and/or a "P" sources listed hazardous waste.

II. CIVIL PENALTY

A. Respondent shall pay a penalty for the cited violations in the amount of Ten Thousand Dollars (**\$10,000.00**).

B. Any payable civil penalty shall be paid within forty-five (45) days of the Department's execution of this Order, by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check. The check shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.

C. The original signed and notarized Order on Consent, along with any applicable submissions, shall be sent to the Department of Environmental Conservation, Office of General Counsel, 625 Broadway 12233, Attention: Benjamin Scrimshaw.

III. RELEASE, SETTLEMENT AND RESERVATION OF RIGHTS

A. This Order shall constitute the full satisfaction and settlement of all civil and administrative claims that could be asserted by the Department against Respondent, its directors, trustees, officers, servants, agents, employees, successors and assigns, for those violations specifically set forth herein, provided, however, that this Order shall not be construed as being in settlement of events not alleged in the NOV and about which the Department lacks knowledge. Nothing contained in this Order shall be construed as otherwise barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee, including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers, with respect to any party, including Respondent. The Department reserves the right to require Respondent to undertake any additional measures required to protect human health or the environment and the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law.

B. This Order shall not be admissible in any forum for any purpose, other than to enforce its terms.

C. This Order shall not restrict or limit Respondent's right at any time to seek a "contained in" or "contained out" determination that some or all of the Waste is non-hazardous pursuant to 6 NYCRR 370.3(a); 371 or any applicable Technical Administrative Guidance Memorandum, including Memorandum 3028, or any similar federal or New York State guidance applicable to environmental media that exhibits hazardous constituent concentrations which are at, or below, applicable action levels. D.

This Order shall not restrict or limit Respondent's right at any time to seek relief from the classification of the Wastes due to any change in applicable law or regulations or the interpretation thereof by the Commissioner or any court of law.

IV. ACCESS

For the purpose of monitoring or determining compliance with this Order, duly authorized representatives of the Department shall be provided access to the Facility, sites, or records owned, controlled or maintained by Respondent at the Facility, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, to take photographs, or to perform any other lawful duty or responsibility. Such duly authorized representatives shall comply with Respondent's health and safety requirements. Provided however that in the event of any conflict between the access requirements of this Section IV and the access provisions of the July 19, 1993 Order on Consent between the parties, Index No. B9-0137-86-04, the 1993 Order on Consent will control with respect to that conflict only.

V. FAILURE, DEFAULT AND VIOLATION OF ORDER

A. Respondent's failure to comply with any provision, term or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. The payable portion of any penalty assessed in the Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order which, after notice to Respondent and a reasonable opportunity to cure, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to Respondent by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order

will constitute a debt owed to the State of New York when and if such penalty become due.

VI. FORMAL TERMS

No terms, conditions, understanding or agreement purporting to modify or vary the terms of this Order shall be binding unless made in writing pursuant to the procedure set forth in Paragraph IX below and signed by the Party against which enforcement is sought. No informal oral or written advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent, shall be construed as relieving Respondent's obligation to obtain such formal approvals as may be required by the terms of this Order on Consent.

VII. INDEMNIFICATION

Respondent shall indemnify and hold the Department, the State of New York, their representatives, employees, agents and contractors 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 this Order by Respondent, its directors, officers, trustees, employees, servant, agents, successors (including successors in title) and assigns to the extent that they are not caused by negligent or reckless acts.

VIII. BINDING EFFECT

A. Respondent and Respondent's successors, and assigns shall be bound by this Order. Respondent through its officers, directors, agents, servants, employees, successors, and assigns shall be responsible for implementing the terms of this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

B. Within thirty (30) days of any change in ownership or corporate status, the Department must be notified of the change. This notification will specify the nature of the change in status, and the name and address of the new responsible party. Once notified of the change, the Department will mail this Order to the new Respondent. The Order will then be executed and notarized by the new Respondent in the same manner

as the original. All terms and conditions contained herein will then be applicable to the new Respondent.

IX. MODIFICATION

In those instances in which Respondent desires that any of the provisions, terms or conditions of this Order be changed, Respondent shall make written application, setting forth the grounds for the relief sought, and such changes shall not become effective except as specifically set forth by written order of the Commissioner or Commissioner's designee.

X. COMMUNICATIONS

All communications required by this Order to the Department shall be transmitted to:

Benjamin Conlon
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
Benjamin.Conlon@dec.ny.gov

Maureen Brady
NYS Department of Environmental Conservation—Region 9
Office of General Counsel
270 Michigan Avenue
Buffalo, NY 14203-2915
Maureen.Brady@dec.ny.gov

Thomas Killeen
NYS Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233-1500
Thomas.Killeen@dec.ny.gov

Copies of all correspondence to Respondent under this Order on Consent shall be provided to:

J. Wylie Donald, Esq.
McCarter & English
1301 K Street, NW
Suite 1000W
Washington, DC 20003
JDonald@McCarter.com]

With a copy not constituting notice to:

Edward F. McTiernan
Arnold & Porter
250 West 55th Street
New York, NY 10019-9710
Edward.McTiernan@arnoldporter.com

The Department and Respondent, respectively, reserve the right to designate other or different addressees on written notice to the other.

XI. FORCE MAJEURE

Respondent shall not suffer any penalty under this Order, or be deemed to be in violation hereof or be subject to any proceeding or action if any Respondent's compliance with any requirement hereof is rendered impossible by a natural event, war, strike, work stoppage, delays attributable to any governmental body other than the Department in issuing permits or approvals needed by the Facility, riot or other catastrophe as to which negligence or misconduct on the part of any Respondent was not the proximate cause; provided, however, that Respondent shall make its best efforts to comply nonetheless and shall, within seventy-two (72) hours, notify the Department by telephone and in writing, pursuant to the communications paragraph set forth in Paragraph VIII of this Order, after obtaining knowledge of any such condition or event, and shall request an appropriate extension or modification of this Order.

XII. ENTIRE ORDER

This Order shall constitute the entire agreement and inure to the benefit of and be binding upon the Department and Respondent its agents, employees, successors and assigns, and all persons, firms, or corporations acting subordinate thereto, with respect to settlement of the violations specifically referenced herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing pursuant to Paragraph VIII of this Order and subscribed by the party to be bound.

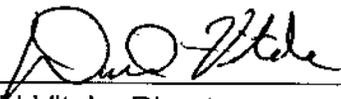
XIII. EFFECTIVE AND TERMINATION DATES

The effective date of this Order on Consent for all purposes shall be the date it is signed by the Commissioner or Commissioner's designee. This Order on Consent shall terminate upon Respondent's strict and timely compliance with all of its terms. The Department will provide Respondent (or Respondent's counsel) with a fully executed

copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

Dated: Albany, New York
June 12, 2019

Basil Seggos, Commissioner
N.Y.S. Department of Environmental
Conservation

By: 

David Vitale, Director
Division of Materials Management

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

Stauffer Management Company LLC, Respondent

By (Signature): [Handwritten Signature]

Print Name: John Paul Ross

Title: Environmental Remediation Manager

Date: 5/29/2019

ACKNOWLEDGMENT

STATE OF Delaware)

COUNTY OF New Castle) ss:

On the 29 day of May in the year 2019 before me personally came John Paul Ross to me known, who, being by me duly sworn, did depose and say that s/he resides in New Castle County, Delaware; that s/he is an officer of Stauffer Management Company LLC; namely the Environmental Remediation Manager of Stauffer Management Company LLC; that s/he is authorized by the governing body of said corporation to sign on behalf of the corporation; and the s/he did sign the foregoing instrument on behalf of, and with the authority to bind, said corporation.

[Handwritten Signature]

Notary Public

Signature and Office of individual taking acknowledgment

