

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4

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CERTIFIED - RETURN RECEIPT REQUESTED

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April 3, 2018

David Orton, Sr., EHS Manager for US API
AMRI Rensselaer, Inc.
33 Riverside Avenue
Rensselaer, NY 12144

Re: Order on Consent
R4-2018-0301-31

Dear Mr. Orton:

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

This will also acknowledge receipt of \$21,250 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: H. Brezner
V. Schmitt
T. Killeen
C. Fragerquist



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT

R4-2018-0301-31

-by-

AMRI Rensselaer, Inc.
33 Riverside Avenue
Rensselaer, NY 12144,

Respondent.

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over Industrial and Hazardous Waste pursuant to Article 27 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. Respondent, AMRI Rensselaer, Inc., is a foreign business corporation which owns a manufacturing facility located at 33 Riverside Avenue in Rensselaer, New York (“Facility”), and identified under EPA ID Number NYD083626077.
3. Respondent is a person as defined by ECL §§ 27-0901(7) and 6 NYCRR 370.2(b)(141).

Background

5. On January 19, 2018, Department staff conducted an inspection of the Facility for compliance with New York State Hazardous Waste Regulations (6 NYCRR Parts 370-374 and 376).
6. During the January 19, 2018 inspection, Department staff observed several instances of significant non-compliance with Regulations.

VIOLATIONS

Labeling Violations

7. During the January 19, 2018 inspection, Department staff observed that Respondent’s notification for exemption from regulation of e-waste material listed an outdated receiving facility for said material.

8. Regulations at 6 NYCRR 371.1(c)(7) requires generators “who raise a claim that a certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation, based on the intent to reclaim, recycle or reuse, must notify the department, in writing, before utilizing the exemption or exclusion. Such notification shall give the **names and locations of the generating and receiving facilities**, if different, identify all exemptions or exclusions that the party is claiming, and describe the activity or activities which are believed to qualify for such exemptions or exclusions.” (Emphasis added).

9. Respondent’s failure to promptly notify the Department of the change in the receiving facility for material for which an exemption from regulation is claimed violated regulation 6 NYCRR 371.1(c)(7).

10. As of January 24, 2018, Respondent has updated its notification and returned to compliance regarding this violation.

11. During the January 19, 2018 inspection, Department staff observed several accumulation containers for hazardous waste which did not include labels identifying their contents as “Hazardous Waste” or other language identifying their contents, including:

- a) 5-Gallon container holding mixed solvents (Rm. 208, Bldg. 17);
- b) 5-Gallon container holding HPCL solvent (Rm 212, Bldg. 17);
- c) 30-Gallon container holding contaminated glass (Rm. 213, Bldg. 17);
- d) 5-Gallon container holding Acid/Aqueous waste (QC Lab, Bldg. 17);
- e) 1-Gallon container holding palladium waste (Rm. 215, Bldg. 17);
- f) 30-Gallon container holding contaminated glass (Rm. 222, Bldg. 17);
- g) 5-Gallon container holding mixed solvents (Bldg. 2);

11. Regulations at 6 NYCRR 372.2(a)(8)(i) provide that generators “may accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste . . . in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status . . . provided the generator . . . marks his containers with the words “Hazardous Waste” and other words that identify the contents of the containers.”

12. Respondent’s failure to properly label containers as containing hazardous waste was a violation of regulation 6 NYCRR 372.2(a)(8)(i).

13. During the January 19, 2018 inspection, but after Department staff’s observations, Respondent returned to compliance by properly labeling the improperly labelled containers.

14. During the January 19, 2018 inspection, Department staff observed one 55-gallon drum labeled “Hazardous Waste” and including the abbreviation “EO7,” and one 55-gallon drum labeled “Hazardous Waste” and including the abbreviation “MeOH,” with no further labeling.

15. Regulations at 6 NYCRR 373-3.9(d)(3) requires that “[c]ontainers holding hazardous waste must be marked with the words “Hazardous Waste” and with other words identifying their contents.”

16. Respondent's failure to properly label the subject drums with words, rather than with their chemical abbreviations which identify their contents, violated regulation 6 NYCRR 373-3.9(d)(3).

17. As of January 23, 2018, Respondent has returned to compliance by submitting photographs to the Department demonstrating that the subject containers were relabeled with words identifying their contents.

Containment Violation

18. During the January 19, 2018 inspection, Department staff observed fifteen partially-collapsed plastic 55-gallon hazardous waste drums in an outdoor storage area.

19. Regulations at 6 NYCRR 373-3.9(b) require that "[i]f a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition"

20. Respondent's failure to transfer hazardous waste from the partially collapsed drums to drums in good condition is a violation of regulation 6 NYCRR 373-3.9(b).

Safety Training Violations

21. During the January 19, 2018 inspection, Department staff learned that neither emergency coordinator employed by Respondent at that time had received training in communication or alarm systems usage.

22. Regulations at 6 NYCRR 373-3.2(g)(1)(iii)(c) require that "facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including where applicable communication or alarm systems;"

23. Respondent's failure to properly train its emergency coordinators in communication or alarm systems use is a violation of regulation 6 NYCRR 373-3.2(g)(1)(iii)(c).

24. During the January 19, 2018 inspection, Department staff further learned that neither emergency coordinator employed by Respondent at that time had received training in responding to explosions.

25. Regulations at 6 NYCRR 373-3.2(g)(1)(iii)(d) require that "facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including where applicable responses to fires or explosions;"

26. Respondent's failure to properly train its emergency coordinators in responses to explosions is a violation of regulation 6 NYCRR 373-3.2(g)(1)(iii)(d).

Contingency Plan Violations

27. Regulations at 6 NYCRR 373-3.4 require that owners and operators of all hazardous waste facilities “must have a contingency plan for the facility [which] must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.”
28. During the January 19, 2018 inspection, Department staff observed that Respondent’s contingency plan did not include a description of what actions facility personnel should take in response to a fire or explosion.
29. Regulation 6 NYCRR 373-3.4(c)(1) specifies that contingency plans “must describe the actions facility personnel must take to comply with subdivisions (b) and (g) of this section in response to **fires, explosions**, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility.” (Emphasis added).
30. Respondent’s failure to include a description of actions to be taken by Facility personnel in response to a fire or explosion in its contingency plan violates regulation 6 NYCRR 373-3.4(c)(1).
31. During the January 19, 2018 inspection, Department staff also observed that Respondent’s contingency plan did not include a description of arrangements agreed to by local police, fire departments, hospitals, contractors and State and local emergency response teams to coordinate emergency services.
32. Regulation 6 NYCRR 373-3.4(c)(3) specifies that contingency plans “must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services”
33. Respondent’s failure to include a description of arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services in its contingency plan violates regulation 6 NYCRR 373-3.4(c)(3).
34. During the January 19, 2018 inspection, Department staff further observed that Respondent’s contingency plan did not include an up-to-date list of emergency equipment at the Facility which specified the location and a physical description of each item on the list and a brief outline of its capabilities.
35. Regulation 6 NYCRR 373-3.4(c)(5) specifies that contingency plans “The plan must include a list of all emergency equipment at the facility (such as fire-extinguishing systems, spill control equipment, communications and alarm systems [internal and external] and decontamination equipment), where this equipment is required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.”
36. Respondent’s failure to include an up-to-date list of emergency equipment at the Facility in its contingency plan violates regulation 6 NYCRR 373-3.4(c)(5).

37. Respondent's failure to include the location and physical description of each item on the emergency equipment list in the Facility's contingency plan constitutes a further violation of 6 NYCRR 373-3.4(c)(5).

38. During the January 19, 2018 inspection, Department staff observed that Respondent's contingency plan listed as emergency coordinator an employee no longer employed Respondent, and fails to list one of Respondent's current emergency coordinators.

39. Regulation 6 NYCRR 373-3.4(e) provides, in pertinent part, that a contingency plan "must be reviewed, and immediately amended, if necessary, whenever . . . the list of emergency coordinators changes."

40. Respondent's failure to immediately amend in its contingency plan to reflect the change in emergency coordinators violates regulation 6 NYCRR 373-3.4(e).

41. As of February 26, 2018, Respondent has returned to compliance with regard to the violations set forth above in paragraphs 27 to 40 by submitting to Department staff an amended contingency plan.

Land Disposal Restriction Recordkeeping Violation

42. During the January 19, 2018 inspection, Department staff observed that Land Disposal Restriction ("LDR") notifications were missing for the shipments associated with the following manifests:

- 001121734VES (June 8, 2017);
- 001121733VES (June 1, 2017);
- 014333974JJK (Dec. 13, 2016);
- 001120397VES (Sept. 21, 2016) Waste online 2 of the manifest was not indicated on the LDR notification;
- 013487672JJK (Sept. 8, 2016);

43. Regulations at 6 NYCRR 367.1(g)(1)(viii) requires generators to retain on-site a copy of all notices, certifications, demonstrations, waste analysis data and other documentation pursuant to this subdivision for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. This requirement applies to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste, or exempted from regulations hazardous waste regulations, subsequent to the point of generation.

44. Respondent's failure to maintain LDR notifications, associated with manifests referred to in paragraph No. 42 above, was in violation of regulation 6 NYCRR 367.1(g)(1)(viii).

45. As of January 24, 2018, Respondent has returned to compliance by submitting the required LDR notifications to the Department.

Emission Standards Violation

46. During the January 19, 2018 inspection, Department staff observed four (4) 55-gallon drums with vents in the bung hole leading directly to the atmosphere.

47. Regulation 6 NYCRR 373-3.29(h)(3)(i) requires that owners and operators of a container using Container Level 1 for the control of air pollutant emissions use one of the following methods:

(a) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (6) of this subdivision.

(b) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(c) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

48. Respondent's failure to employ one of the three Container Level 1 containment methods mandated by regulations violated regulation 6 NYCRR 373-3.29(h)(3)(i).

49. As of January 23, 2018, Respondent has returned to compliance by submitting photographs to the Department demonstrating that the bung holes on the subject drums have been closed and the vents removed.

Waiver of Hearing

50. 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 it agrees to be bound by the terms, provisions and conditions contained herein.

Civil Penalty

51. ECL § 71-2705(1) provides for a maximum civil penalty of not more than \$37,500 for an initial violation of Title 9 of Article 27, and an additional penalty of not more than \$37,500 for each day during which such violation continues.

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

I. **Civil Penalty.** Respondent is assessed a civil penalty in the amount TWENTY-ONE THOUSAND, TWO HUNDRED FIFTY DOLLARS (\$21,250). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the

Department. The civil penalty shall be paid by company or bank check, payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent's obligation to complete performance of the terms of this Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner's name, facility name and address, contact name, and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting under or controlled by it.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees, 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, its directors, officers, employees, agents, successors or assigns.

VII. **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, such change to be made only upon written agreement of the parties.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary for the Department to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

X. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent for any other violations of the ECL, rules or regulations promulgated thereunder;

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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.

XI. Review of Submitted Documentation. 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed 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 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 the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal 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 submittal 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.

XII. **Default.** The penalty assessed in this 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, may result in referral to the NY State Attorney General for collection of the entire amount owed (including assessed interest and a charge to cover debt collection costs), or referral to the NY State Department of Taxation and Finance, which may offset, by the penalty amount, any tax refund or other monies that may otherwise be owed to you by the State of York.

XIII. **Communications.** Communications shall be sent to:

For the Department:

New York State Department of Environmental Conservation
Region 4
Attn: Howard S. Brezner
1130 North Westcott Road
Schenectady, NY 12306

For Respondent:

AMRI Rensselaer, Inc.
Attn: David Orton, Sr. EHS Manager for US API
33 Riverside Avenue
Rensselaer, NY 12144

DATED: Rotterdam, New York
April 2, 2018

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

Within five (5) days of the effective date of this Order, Respondent shall submit to the Department:

1. Documentation which demonstrates that the structural integrity and storage effectiveness of containers is not impacted by bulges and partial collapse caused by temperature fluctuation, and that Respondent has a procedure in place to conduct daily inspections of the storage area when these containers are bulging and/or partially collapsing, to ensure that the containers do not leak, and to record the results of these inspections. These inspection logs must be kept on site for at least three (3) years.
 - a. If Department staff deems Respondent's initial documentation regarding this item unacceptable, Department staff will respond to that effect within two (2) weeks of receipt of that documentation, along with an explanation of what information must be submitted or clarified.
 - b. Upon receipt of Department staff's rejection, Respondent shall supply the requested information within two (2) weeks.
2. Documentation which demonstrates that all emergency coordinators employed by Respondent have received the proper training on communication and/or alarm systems usage in the event of emergency.