

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

7013 1090 0002 3365 0723

December 5, 2014

Tom Kowel
Apalachee, LLC
1423 Highland Ave
Rochester, NY 14620

Re: Order on Consent
R4-2014-1113-168

Dear Mr. Kowel:

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

This will also acknowledge receipt of \$1,640 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: G. McPherson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law,
Article 19

Order on Consent
File No. R4-2014-1113-168

-by-

Apalachee, LLC
1423 Highland Ave
Rochester, NY 14620

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
2. Respondent, Apalachee, LLC, owns a salt dryer combustion unit which is operated at the Port of Coeymans, 2170 Route 144, Coeymans, New York ("site").
3. On October 21, 2014 and October 29, 2014, Department staff inspected the site and found the salt dryer to be in a steady state of operation and was utilizing water sprays in the stack as particulate control. The smoke from the stack appeared to be steam with a detached particulate plume.

First Violation

4. Regulations at 6 NYCRR 201-4.1(a) provide that "*Owners or operators of facilities with emission sources that are not considered to be exempt or trivial pursuant to Subpart 201-3 of this Part and not otherwise required to obtain a permit pursuant to Subparts 201-5 or 201-6 of this Part are required to register with the department as specified in this Subpart. Such facilities include, but are not limited to:*

(1) any facility which has annual actual emissions of regulated air contaminants, each of which do not exceed the appropriate threshold in section 201-4.5(a) of this Subpart, regardless of the facility's potential to emit for that contaminant; and

(2) any facility, except a stationary or portable combustion installation, with annual actual emissions of all persistent, bioaccumulative or toxic compounds in an amount that is less than the threshold listed in table 1 of Subpart 201-9 of this Part."

5. Regulations at 6 NYCRR 200.1 (f) define an air contamination source or emission source as "*any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system, air cleaning device, but excepting an indirect source of air contamination as defined in Part 203 of this Title. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.*"
6. The facility contains multiple emission points.
7. The emission points are an air contamination source as defined in 6 NYCRR 200.1 (f).
8. Respondent violated regulations at 6 NYCRR 201-4.1 (a) by operating a non-exempt source at the facility without a registration or permit.

Civil Penalty

9. ECL Section 71-2103(1) provides that: *... "any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided."*

Waiver of Hearing

10. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and have 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 ONE THOUSAND SIX HUNDRED FORTY DOLLARS (\$1,640) is assessed against the Respondent 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.

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

III. This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

V. 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.

VI. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VII. 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 fulfillment or attempted fulfillment of the provisions hereof by Respondent, its employees, its servants, its agents, its successors or its assigns.

VIII. 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 violations of the ECL, rules or regulations promulgated thereunder or permits issued 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 agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's 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.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

X. 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 submittals shall be incorporated into and become an enforceable part of Order.

(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 twenty (20) 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. This shall be considered a violation of the Order. The Respondent reserves its right to contest the alleged violation.

XI. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: Dec. 5, 2014
Rotterdam, New York

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

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", written over a horizontal line.

Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Apalachee, LLC

SIGNED: Thomas A. Kowal

TITLE: Owner

DATE: 12/3/2014

STATE OF New York)

COUNTY OF Monroe) ss.:

On the 3 day of December in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared THOMAS A KOWAL personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Matylda Kiljan
Notary Public
Qualified in the County of: MONROE
My Commission Expires: May 28th 2017

Matylda Kiljan
01K16282888
Notary Public, State of New York
Qualified in Monroe County
My commission expires MAY 28th, 2017

SCHEDULE OF COMPLIANCE

1. Within 90 days of the effective date of this Order, Respondent shall cease to operate any other dryer combustion unit on the property unless all of the following conditions are met:

a) Submit to the Department, a complete New York State Air State Facility Permit Application.

b) Install and operate a properly designed air pollution control device on the salt dryer combustion unit. Emission calculations shall be submitted with the Permit Application.

c) Demonstrate compliance with any other applicable regulations including but not limited to the opacity standard set forth in regulations at 6 NYCRR 227-1.3(a);

d) The salt dryer combustion unit is continuously operated in a manner that does not emit air contaminants in such quantity, characteristic or duration that unreasonably interferes with the comfortable enjoyment of life or property including but not limited to any particulate, fume, gas, mist, odor, smoke, vapor, toxic, or deleterious emission, either alone or in combination with others.