

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8657

November 8, 2018

Mark Rossetti
Director of Technical Services
Auterra, Inc.
2135 Technology Drive
Schenectady, NY 12308

Re: Order on Consent
R4-2018-0713-154

Dear Mr. Rossetti:

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

This will also acknowledge receipt of \$4,800 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: A. Elliott



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27,
Title 9 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2018-0713-154

Auterra, Inc.
2135 Technology Drive
Schenectady, NY 12308

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for regulation of hazardous waste management pursuant to Article 27, Title 9 of the Environmental Conservation Law (the "ECL").
2. On May 1, 2018, Department staff performed an inspection of Auterra, Inc. located at 2135 Technology Drive, Schenectady, New York 12308 ("site").

First Violation

3. At the time of the May 1, 2018 inspection, Department staff determined that at least three of the fourteen drums of waste observed were also observed in the storage shed during the last inspection which occurred August 9, 2016. Only three drums of waste had been shipped since the 2016 inspection. Storage dates ranged from January 22, 2015 to November 5, 2016, constituting a storage time of between 830 and 542 days, respectively.
4. Regulations at 6 NYCRR §372.2(a)(8)(ii) provide that "*Except as provided in subparagraphs (iii), (iv) and (v) of this paragraph, a generator may accumulate hazardous waste onsite of generation for a period of 90 days or less under the provisions of section 373-1.1(d)(1)(iii), (iv), (xix) and (xx) of this Title. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on all containers, tanks or storage areas.*"
5. Respondent violated regulations at 6 NYCRR §372.2(a)(8)(ii) by accumulating hazardous waste on the site of generation for more than 90 days.

6. Regulations at 6 NYCRR §376.5(a)(1)(i) provide that “*Except as provided in this section, the storage of hazardous wastes restricted from land disposal under section 376.3 of this Part or RCRA section 3004 is prohibited, unless the following conditions are met: (i) A generator stores such waste in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with all storage requirements of Part 372, Subparts 373-1, 373-2, and 373-3 of this Title.*”

7. Respondent’s violation of regulations at 6 NYCRR §372.2(a)(8)(ii) is also a violation of the land disposal regulation at 6 NYCRR §376.5(a)(1)(i) by incorporation by reference.

Civil Penalties

8. ECL Section 71-2705(1) provides for a maximum civil penalty of \$37,500 for the first day of a violation and each day thereafter of a regulation promulgated under Title 13 of ECL Article 27.

Waiver of Hearing

9. The Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Civil Penalty

Respondent is hereby assessed a civil penalty in the amount of FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800) for the violations stated herein. The civil penalty shall be paid with the return of the signed and notarized Order. Payment shall be made by bank or certified check or money order made out to the Department of Environmental Conservation.

II. Indemnification

Respondent shall indemnify and hold harmless New York State, DEC, and any of their representatives, employees or contractors for all claims, actions, damages, and costs of any name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions of this Order by Respondent, their employees, contractors, servants, agents, successors or assigns.

III. Other Remedies

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the following: (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that DEC may have against anyone other than Respondent; (2) DEC's right to enforce, administratively or otherwise, the terms, provisions and conditions of this Order against Respondent, its employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof, and to subject Respondent to penalties for such violations, or for other violations of the ECL; and (3) 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 or this Order on Consent.

IV. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

V. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

VI. Binding Effect

The provisions of this Order shall be deemed to bind Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it.

VII. Reports

All reports and submissions herein required shall be made to the Region 4 Headquarters, New York State Department of Environmental Conservation, 1130 North Westcott Road Schenectady, New York, 12306, Att: Regional Materials Management Engineer; with reference to Order on Consent: R4-2018-0713-154.

VIII. Inspections

For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of the Respondents compliance with this Order.

IX. Summary Abatement

The terms of this Order shall not be construed to prohibit the Commissioner of his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

Dated: *November 7* 2018
Rotterdam, NY

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Auterra, Inc.

BY: Mat R...

TITLE: Director of Technical Services

DATE: 10/23/2018

STATE OF NEW YORK)
COUNTY OF Schenectady)ss.:

On the 23 day of October in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared in Schenectady NY, 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.

Joseph M. Clement
Notary Public
Qualified in the County of: Rensselaer
My Commission Expires: 3/9/19

JOSEPH M. CLEMENT
Notary Public- State of New York
No. 01CL6236821
Qualified In Rensselaer County
My Commission Expires March 7, 2019