

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 27 and Article 12
of the New York State Navigation Law,

ORDER ON CONSENT

-by-

File No. R4-2009-0910-145

Bill's Auto Parts, Inc.

Respondent

WHEREAS:

1. The Department has jurisdiction over vehicle dismantling facilities pursuant to ECL Article 27 and over oil spill prevention and control pursuant to Article 12 of the New York State Navigation Law ("NL").
2. Respondent, Bill's Auto Parts, Inc., 522 Rt. 67, Amsterdam, New York, owns and operates a vehicle dismantling facility ("facility").
3. On August 12, 2009, Department staff conducted an inspection of the facility ("inspection").
4. ECL 27-2303(2) provides that "all fluid draining, removal, and collection activities shall be conducted on asphalt or concrete surface or other surface that allows equivalent protections to surface and groundwater. Such surfaces shall be cleaned daily, or more frequently when spillage has occurred, using absorbent materials that are collected and properly disposed of."
5. During the inspection, Department staff observed dismantling occurring on a dirt surface. Department staff also observed pools of coolant and spills of oil. It was evident to Department staff that the area was not being cleaned daily. Numerous engines were also observed being stored on dirt outside of the dismantling area with evidence of fluids leaking from them.
6. Respondent's failure to conduct dismantling activities on an asphalt or concrete surface and failure to clean the surface and any spills occurring on a daily basis are violations of ECL 27-2303(2).
5. NL Section 173 prohibits the discharge of petroleum.
6. Respondent violated NL Section 173 by discharging petroleum at the facility.

7. NL Section 175 states that “any person responsible for causing a discharge shall immediately notify the department pursuant to rules and regulations established by the department, but in no case later than two hours after the discharge.”
8. Respondent violated NL Section 175 by not notifying the Department of the discharge within 2 hours of discovery.
9. NL Section 176 requires that any person discharging petroleum immediately undertake to contain such discharge.
10. Respondent violated NL Section 176 by not containing the discharge.
11. ECL 27-2303(1) requires that vehicle dismantlers must submit an annual report to the Department. The annual report must include the number of mercury containing devices recovered.
12. A review of the 2006 and 2007 annual reports submitted to the Department by the Respondent indicates that while a total of 2,200 cars were crushed at the facility, the number of mercury containing devices recovered was reported as “unknown” on both annual reports.
13. A review of the 2006 and 2007 annual reports submitted to the Department by the Respondent also indicates that while a total of 2,200 cars were crushed at the facility, only a total of 80 pounds of refrigerant were reported. Conservative estimates indicate that at least 220 pounds of refrigerant should have been reported.
14. Respondent’s failure to track and report the number of mercury containing devices it recovered during 2006 and 2007 and the failure to accurately report the amount of refrigerant collected during 2006 and 2007 are violations of ECL 27-2303(1).
15. ECL 27-2303(6) provides that fluid containers “shall be stored on a bermed asphalt or concrete surface or surface that allows equivalent protection to groundwater.”
16. During the inspection, Department staff observed that the gas storage tank was not stored on a bermed asphalt or concrete surface or surface that allows equivalent protection to groundwater.
17. Respondent’s failure to store the gas storage tank on a bermed asphalt or concrete surface or surface that allows equivalent protection to groundwater is a violation of ECL 27-2303(6)
18. NL Section 192 provides that any person who violates any of the provisions of Article 12 of the NL, or any rule promulgated thereunder, or who fails to comply with any duty created by this article, shall be subject to a penalty not to exceed Twenty-five thousand dollars (\$25,000).

19. ECL Section 71-4003 provides that any person who violates any provision of ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed five hundred dollars (\$500) and an additional civil penalty of not more than five hundred dollars for each day during which each such violation continues.

20. Respondent has affirmatively waived their right 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 its terms, provisions and conditions contained within the Order.

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 TEN THOUSAND DOLLARS (\$10,000) is hereby assessed against the Respondent. FIVE THOUSAND DOLLARS (\$5,000) of the civil penalty is due in accordance with the following schedule:

1. \$1,000 with the return of the signed and notarized copy of this Order;
2. \$1,000 by November 30, 2009;
3. \$1,000 by December 31, 2009,
4. \$1,000 by January 31, 2010 and
5. \$1,000 by February 28, 2010.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, FIVE THOUSAND DOLLARS (\$5,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

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

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

V. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VI. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VII. 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.

VIII. This Order is deemed effective on the date signed by the Department.

IX. 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, their agents, servants, employees, successors and 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.

X. A. 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 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 thirty (30) 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. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

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

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
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 their rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Bill's Auto Parts, Inc.

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 200__, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

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

of the _____,
(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.

Notary Public
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Respondent shall submit to the Department for approval a work plan and schedule for the removal of all contaminated soil at the site. This work plan shall include a post-excavation sampling plan. Respondent shall implement the work plan immediately upon receipt of approval from the Department. The work plan and schedule shall become enforceable under this Order.
2. Within 30 days after the completion of the soil removal work, Respondent shall install a smooth, cleanable, concrete work area for repair and dismantling activities.
3. Respondent shall store all engines removed from vehicles under cover and either off of the ground or on an impervious surface.
4. Within 30 days of the effective date of this Order, Respondent shall install a bermed asphalt or concrete surface around the gas storage tank(s).
5. All future spills shall be reported to the Department's Spill Hotline(1-800-457-7632) within two hours of discovery and cleaned up appropriately.