

**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 8732

May 30, 2018

Jordan R. Pavlus, Esq.  
Byrne, Costello & Pickard, P.C.  
100 Madison Street  
Tower I, Suite 1600  
Syracuse, NY 13202

Re: Order on Consent  
R4-2017-1026-259  
Classic Environmental, Inc.

Dear Mr. Pavlus:

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

This will also acknowledge receipt of \$4,000 1st of 6 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$2,000 is due on or before June 22, 2018.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: K. Garnsey, ECO



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Alleged Violations of  
Article 17 of New York State Environmental  
Conservation Law

-by-

**ORDER ON CONSENT**  
R4-2017-1026-259

Classic Environmental, Inc.  
112 Wade Road  
Latham, NY 12110

Respondent

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WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (“the Department”) is a department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to inter alia, Section 3-0301 of the Environmental Conservation Law (“ECL”). In particular, DEC regulates the discharge from point sources and storm water pursuant to ECL 17-0501.1 et seq. and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 750 et seq.
2. Respondent, Classic Environmental, Inc., owns/operates a business which specializes in Industrial and Commercial Asbestos Removal & Abatement, Lead Abatement, Mold Remediation, as well as Roofing and Demolition, in both the public and private sectors, located at 112 Wade Road, Latham, New York.
3. On October 24, 2017, Respondent engaged in power washing a building located at the Harriman Campus 1220 Washington Ave Building #4, Albany, New York (“site”). The action of power washing the building created lead paint run-off into into the storm drain which discharges to the Krumkill Creek.

### Violations

4. ECL 17-0505 provides that *“the making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by section 17-0701 or title 8 hereof are prohibited.”*
5. ECL 17-0501 provides that *“it shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.”*
6. ECL 71-3503 provides that *“a person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.”*
7. Respondent violated ECL 17-0505, ECL 17-0501, and ECL 71-3503 by creating lead paint runoff which flowed into the storm drain which discharges to the Krumkill Creek.

### Civil Penalty

8. ECL 15-0501.1 provides that any violator of Articles 3 or 7 of the provisions of Article 17 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to Seven thousand five hundred dollars (\$7,500) for each violation and an additional penalty of not more than \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

### Waiver of Hearing

9. In settlement of the Respondent’s aforesaid violations, it waives all rights to a hearing herein as provided by law, and consents to the issuing and entering of this Order on consent pursuant to the provisions of Articles 17 and 71 of the ECL, and agreed to be bound by the provisions, terms and conditions herein. Notwithstanding the foregoing, the existence of this Order or the Respondent’s compliance with it, shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

**I. PENALTIES**

With respect to the aforesaid alleged violation, a civil penalty in the amount of FOURTEEN THOUSAND DOLLARS (\$14,000) is hereby 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.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$4,000.00 with the return of the signed and notarized copy of this Order;
2. \$2,000.00 by June 22, 2018;
3. \$2,000.00 by July 20, 2018;
4. \$2,000.00 by August 24, 2018;
5. \$2,000.00 by September 21, 2018;
6. \$2,000.00 by October 19, 2018;

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.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

**II. STANDARD PROVISIONS**

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: May 29, 2018  
Rotterdam, New York

Basil Seggos,  
Commissioner  
New York State Department of  
Environmental Conservation

By:



Keith Goertz  
Regional Director  
Regional 4



## **STANDARD PROVISIONS**

**Payment.** Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to:

Department of Environmental Conservation  
Region 4, Attn: Karen Lavery  
1130 North Westcott Road  
Schenectady, NY 12306

**Effective Date and Duration.** The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

**Access.** For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

**Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**Indemnity.** 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 resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

**Modifications.** No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

## **Settlement and Reservation of Rights**

A. This Order settles all potential claims as of the effective date of this Order, for civil, criminal and administrative actions concerning the violations described in this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in paragraph A above, nothing contained in this Order shall be construed as 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) or authorities with respect to any party, including Respondent.

**Entire Agreement:** This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect:** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Service:** If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

**Multiple Respondents:** 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.



## Schedule of Compliance

1. Within 30 days of the effective date of this Order, Classic Environmental, Inc., shall develop training materials for its employees, which shall include but not be limited to, proper disposal of paint run-off and any other hazardous materials utilized in the normal course of business. These training materials shall be submitted to the Department for approval prior to distribution to Respondent's employees.

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