

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
7016 0340 0000 4616 5324

February 15, 2017

Mr. Scott Crowe
Colonie Wood Treating & Staining Corp.
P.O. Box 16
Northeast Industrial Park Building # 11
Guilderland Center, NY 12085

Re: Order on Consent
R4-2016-1202-169

Dear Mr. Crowe:

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

This will also acknowledge receipt of \$14,250 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery / JV

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: H. Brezner



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. R4-2016-1202-169

Colonie Wood Treating & Staining Corp.
P.O. Box 16
Northeast Industrial Park Building #11
Guilderland Center, NY 12085

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 November 17, 2016, Department staff performed an inspection ("inspection") of Colonie Wood Treating & Staining Corp. located at 70 Fuller Road, Albany, New York ("facility"). The facility has EPA Identification Number NYD980774889.

First Violation

3. Regulations at 6 NYCRR §373-1.1(d)(1)(xix) requires the placement of drip pads of hazardous waste that is generated onsite, for a period not exceeding 90 days, provided the generator complies with § 373-3.23 of this Part and maintains the following records at the facility:
 - (a) a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and
 - (b) documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.
4. At the time of the inspection, Respondent did not have a description of the procedures that they follow to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and any documentation for each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal, which is in violation of regulations at 6 NYCRR §373-1.1(d)(1)(xix).

Second Violation

5. Regulations at 6 NYCRR §373-3.2(g)(4) requires the owner or operator to maintain the following documents and records at the facility:

- the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each position.
- a written job description for each applicable position. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.
- a written description of the type and amount of both introductory and continuing training that will be to each person filling a position (related to hazardous waste management).
- records that document that the training or job experience required has been given to, and completed by facility personnel.

6. At the time of the inspection, Respondent was not in possession of any of the aforementioned documents which is in violation of regulations at 6 NYCRR §373-3.2(g)(4).

Third Violation

7. Regulations at 6 NYCRR § 373-3.2(g)(1),(2), and (3) require that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Subpart. In addition, the owner or operator must ensure that:

- this program is directed by a person trained in hazardous waste management waste procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.
- at a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:
 - procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
 - key parameters for automatic waste feed cut-off systems;
 - communications or alarm systems;
 - response to fires and explosions;
 - response to groundwater contamination incidents; and
 - shutdown of operations.

8. At the time of the inspection, Respondent did not have a training program that addressed any of these requirements, which is in violation of regulations at 6 NYCRR § 373-3.2(g)(1),(2), and (3).

Fourth Violation

9. Regulations at 6 NYCRR § 373-3.2(g)(1),(2), and (3) require that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Subpart. In addition, the owner or operator must ensure that:

- facility personnel successfully complete the program required within 6 months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements.

10. At the time of the inspection, Respondent's personnel had not successfully completed the program by the effective date of these regulations or six months after the date of their employment, which is in violation of 6 NYCRR § 373-3.2(g)(1),(2), and (3).

Fifth Violation

11. Regulations at 6 NYCRR §373-3.3(g)(1) requires that the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services for these organizations:

- agreements with State emergency response teams, emergency response contractors, and equipment suppliers.
- arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

12. At the time of the inspection, Respondent did not have agreements with State emergency response teams, emergency response contractors, and equipment suppliers. Also, Colonie has not made arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility, which is in violation of regulations at 6 NYCRR §373-3.3(g)(1).

Sixth Violation

13. Regulations at 6 NYCRR § 373-3.4(c) requires the following content in a Contingency Plan:

- the Contingency Plan must describe actions facility personnel must take to comply with New York State Hazardous Waste Regulations in response to fires, explosions, or any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility.
- the Plan must list names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternatives.
- the Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communication 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.

14. At the time of inspection, Respondent's contingency plan did not have:

- (a) a description of the actions facility personnel must take in response to fires, and explosions.
- (b) the emergency coordinators' home telephone numbers or home addresses.
- (c) an up-to-date list of emergency equipment along with their location; a physical description of each item on the list; and a brief outline of its capabilities.

15. The failure to include in Respondent's contingency plan, the items set forth in paragraph No. 14 above, which is in violation of regulations at 6 NYCRR § 373-3.4(c).

Seventh Violation

16. Regulations at 6 NYCRR § 373-3.4(d)(1) requires a copy of, and all revisions to, the contingency plan be kept at the facility.

17. At the time of the inspection, Respondent did not have a copy of, and all revisions to, the contingency plan on-site. It was located at their corporate office in the Holbrook Lumber office in the Guilderland Industrial Park, in violation of regulations at 6 NYCRR § 373-3.4(d)(1).

Eighth Violation

18. Regulations at 6 NYCRR §373-3.4(d)(2) requires that each owner or operator must submit copies of their Contingency Plan to all local police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services.

19. At the time of the inspection, Respondent had not sent copies of the Contingency Plan to all of the emergency services that may be called upon, which is in violation of regulations at 6 NYCRR §373-3.4(d)(2).

Ninth Violation

20. Regulations at 6 NYCRR § 373-3.4(e) requires that the Contingency Plan must be reviewed, and immediately amended, if necessary, whenever:

- applicable regulations are revised;
- the Plan fails in an emergency;
- the facility changes--in its design, construction, operation, maintenance or other circumstances--in a way that materially increase the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
- the list of emergency coordinators changes; or
- the list of emergency equipment changes.

21. At the time of the inspection, Respondent had not amended their Contingency Plan to account for changes in their list of emergency coordinators and emergency equipment. None of the emergency coordinators listed in the contingency plan actually work for Respondent, which is in violation of regulations at 6 NYCRR § 373-3.4(e).

Tenth Violation

22. Regulations at 6 NYCRR § 373-3.23(b)(1) requires that for each existing drip pad as defined in regulations at 6 NYCRR § 373-3.23(a), the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this section, except the requirements for liners and leak detection systems of regulations at 6 NYCRR § 373-3.23(d)(2). No later than the effective date of these regulations, the owner or operator must obtain and keep on file at the facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer registered in New York State who attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of regulations at 6 NYCRR § 373-3.23(d) are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of subdivision (d) of this section, except the standards for liners and leak detection systems, specified in regulations at 6 NYCRR § 373-3.23(d)(2).

23. At the time of the inspection, Respondent had evaluated the drip pad and determined that it met all of the requirements of Part 373-3.23. The Respondent had a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer registered in New York State who attests to the results of the evaluation. However this assessment indicated that the drip pad should be hydro tested, and there was no documentation on this test. Therefore, Respondent must have the assessment reviewed, updated and re-certified annually. Also, the evaluation did not document the extent to which the drip pad meets each of the design and operating standards, which is in violation of regulations at 6 NYCRR § 373-3.23(b)(1).

Eleventh Violation

24. Regulations at 6 NYCRR § 373-3.23(d)(iv)(b) require that the drip pad owner or operator must obtain and keep on file at the facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer registered in New York State, who attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this subdivision, except for regulations at 6 NYCRR § 373-3.23(d)(2).

25. At the time of the inspection, Respondent had a written assessment of the drip pad, reviewed and certified by an independent qualified professional engineer registered in New York State that attests to the results of the evaluation. However, the assessment has not been reviewed, updated and recertified annually since 2000. The evaluation must document the extent to which the drip pad meets the design and operating standards, which is in violation of regulations at 6 NYCRR § 373-3.23(d)(iv)(b).

Twelfth Violation

26. Regulations at 6 NYCRR § 373-3.23(d)(9) require that the drip pad surface must be cleaned thoroughly in a manner and frequency such that the accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning procedure used the facility's operating log.

27. At the time of the inspection, Respondent had cleaned the drip pad surface thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. However, Respondent has not documented the date and time of each cleaning and the cleaning procedure used, in the facility's operating log, which is in violation of regulations at 6 NYCRR § 373-3.23(d)(9).

Civil Penalties

28. 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

29. 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 FOURTEEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$14,250) 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 Hazardous Waste Engineer.

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.

X. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

XI. Termination of Order on Consent

This Order on Consent, including the Schedule of Compliance requirements, shall terminate one year after the effective date of this Order on Consent.

Dated: February 15, 2017
Rotterdam, NY

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

Schedule of Compliance

1. Within 10 days of the effective date of the Order, Respondent shall submit a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and a Standard Operating Procedure that explains how the Respondent will document each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.
2. Within 10 days of the effective date of the Order, Respondent shall submit the following documents:
 - the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each position.
 - a written job description for each applicable position. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.
 - a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position (related to hazardous waste management).
 - records that document that the training or job experience required has been given to, and completed by facility personnel.
3. Within 10 days of the effective date of this Order, Respondent shall submit a training program which includes facility personnel hazardous waste management procedures (including contingency plan implementation) and addresses the requirements of 6 NYCRR Part 373-3.2(g)(1),(2), and (3). This submittal must include the name and outline of qualifications in hazardous waste management.
4. Within 10 days of the effective date of this Order, Respondent must submit a schedule for training each employee involved with hazardous waste management.
5. Within 30 days of the effective date of this Order, Respondent must make agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility. Within 45 days of the effective date of this Order, Respondent must submit a description of these agreements and arrangements.

6. Within 10 days of the effective date of this Order, Respondent must submit to the Department for its review and approval, a revised Contingency Plan that includes:
 - (a) a description of the actions facility personnel must take in response to fires, and explosions;
 - (b) a list of emergency coordinators, their work telephone numbers, home telephone numbers and home addresses.
 - (c) an up-to-date list of emergency equipment along with their location; a physical description of each item on the list; and a brief outline of its capabilities.
7. Within 10 days of the effective date of this Order, Respondent shall place a copy of their Contingency Plan at their facility located at 70 Fuller Road, Colonie, NY.
8. Within 10 days of Department approval of the revised Contingency Plan required under item No. 6 of the Schedule of Compliance, Respondent shall submit copies of their Contingency Plan to all local police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services. Within 20 days of Department approval of the revised Contingency Plan required under item No. 6 of the Schedule of Compliance, Respondent must submit to the Department, documentation to establish that Respondent submitted copies of their Contingency Plan to all local police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services.
9. No action required.
10. Within 15 days of the effective date of this Order, Respondent must evaluate the drip pad and determine that it meets all of the requirements of this section, except the requirements for liners and leak detection systems of regulations at 6 NYCRR §373-3.23(d)(2). Within 30 days of the effective date of this Order, Respondent shall submit to and keep on file at the facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer registered in New York State that attests to the results of the evaluation. This evaluation must also document the extent to which the drip pad meets each of the design and operating standards. Within 6 months of the effective date of this Order, Respondent shall implement any and all recommendations made based upon the results of the evaluation.
11. No action required.

12. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, a description of a procedure that will be followed to ensure that the drip pad surface is cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. This procedure must describe how Respondent will document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.