

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 3833

April 21, 2014

Christine Blakely
Electro Fiber Technologies, LLC
679 Mariaville Road
Schenectady, NY 12306

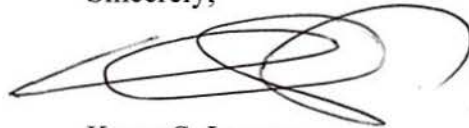
Re: Order of Consent
R4-2014-0313-73

Dear Ms. Blakely:

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

This will also acknowledge receipt of \$3,248 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: H. Bezner

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27,
Title 13 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2014-0313-73

Electro Fiber Technologies, LLC
679 Mariaville Road
Schenectady, NY 12306

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 13 of the Environmental Conservation Law (the "ECL").
2. On February 21, 2013, Department staff conducted an inspection ("inspection") of Electro Fiber Technologies, LLC, located at 679 Mariaville Road, Schenectady, New York ("facility"). The facility has EPA Identification Number NYR000107979.

First Violation

3. Regulations at 6 NYCRR 372.2(a)(8)(ii)(2) provide that *"except as provided in subparagraphs (iii), (iv), and (v) of this paragraph, a generator may accumulate hazardous waste on-site of generation for a period of 90 days or less under the provisions of subparagraphs 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."*
4. At the time of the inspection, Department staff observed that seven of the ten drums did not have the accumulation start date marked on them. The seven drums contained spent copper/nickel solution, electrolytic nickel, electrolytic clepo copper solution and nitric acid, which is in violation of regulations at 6 NYCRR 372.2(a)(8)(ii)(2).

Second Violation

5. Regulations at 6 NYCRR §373-1.1(d)(1)(iii) and (iv) require generators of liquid hazardous waste located over a sole source aquifer and generators that store more than 8,800 gallons of liquid hazardous waste to comply with the following:

- The generator of liquid hazardous waste located over a sole source aquifer has a written closure plan.

6. At the time of the inspection, Department staff determined that Respondent did not have a closure plan, which is in violation of regulations at 6 NYCRR §373-1.1(d)(1)(iii) and (iv).

Third Violation

7. Regulations at 6 NYCRR 372.2(b)(2)(ii) require that “*Prior to shipment of hazardous waste off the site at which such waste was generated, the generator must:*

(i) designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. The generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that it is authorized to handle the particular hazardous waste described on the manifest.

(ii) for each hazardous waste listed in Item 9 of the manifest, confirm with the designated facility what the ultimate disposal method will be for that waste. If the receiving TSD facility is not providing a hazardous waste management code in item 19 that reflects the ultimate disposal method for the hazardous waste, the generator must provide a State waste code in Item 13 of the manifest to designate the ultimate disposal method of the hazardous waste using one of following state codes:

L = Landfill

B = Incineration, heat recovery, burning

T = Chemical, physical, or biological treatment

R = Material recovery of more than 75 percent of the total material

If the receiving TSD facility uses hazardous waste report management method code for "storage, bulking, and/or transfer off-site - no treatment/recovery, fuel blending, or disposal at this site" in Item 19 of the manifest form, and the generator has failed to provide the ultimate disposal method in Item 13, the ultimate disposal method is deemed landfill (L)."

8. At the time of the inspection, Department staff determined that none of the wastes on Respondent's manifests had an ultimate disposal code marked in box No. 9. The material management code on the TSDF portion of the manifests was H141. Since this management code is not an ultimate disposal method, the generator was required to put a L, B, T or R on the manifests for each waste stream shipped. Respondent's failure to do so is a violation of 6 NYCRR 372.2(b)(2)(ii).

Fourth Violation

9. Regulations at 6 NYCRR §372(b)(2)(i) provide that *“prior to shipment of hazardous waste off the site at which such waste was generated, the generator must designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. The generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that it is authorized to handle the particular hazardous waste described on the manifest.”*

10. At the time of the inspection, Respondent was unable to produce any written communication to establish that its TSDF (Northland Environmental) was authorized to accept hazardous waste, which is in violation of regulations at 6 NYCRR §372(b)(2)(i).

Fifth Violation

11. Regulations at 6 NYCRR §372.2(b)(2)(iii) require that *“the generator must confirm by written communication from the designated transporter(s) that they are authorized to deliver the manifested waste to the designated treatment, storage or disposal facility.”*

12. At the time of the inspection, Respondent was unable to produce any written communication showing that their transporter (21st Century) was authorized to haul hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(iii).

Sixth Violation

13. Regulations at 6 NYCRR §373-3.2(g)(4)(ii) provide that the owner or operator *“must maintain a written job description for each position listed under subparagraph (i) of this paragraph. 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 employees assigned to each position.”*

14. At the time of the inspection, Respondent was unable to produce any written job descriptions for personnel involved with hazardous waste management, which is in violation of 6 NYCRR §373-3.2(g)(4)(ii).

Seventh Violation

15. Regulations at 6 NYCRR §373-3.4(c)(4) requires that the contingency plan *“must list names, addresses, and phone numbers (office and home) of all persons to act as emergency coordinator (see subdivision (f) of this section), 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 others must be listed in the order in which they will assume responsibility as alternates.”*

16. At the time of the inspection, Department staff determined that Respondent's contingency plan was missing home addresses and home phone numbers for its emergency contacts, which is in violation of regulations at 6 NYCRR §373-3.2(g)(4)(ii).

Eighth Violation

17. Regulations at 6 NYCRR 376.1(g)(1)(ii) requires generators of waste that do not meet the treatment standard to send a one-time written notice with the initial shipment to each treatment or storage facility and place a copy in their files. The notice must include the following information:

- EPA Hazardous Waste number
- Manifest numbers
- The constituents of concern for F001-F005, and F039, and underlying hazardous constituents (for wastes that are not managed in a Clean Water Act (CWA) or CWA-equivalent facility), unless the waste will be treated and monitored, there is no need to put them on all the LDR notice.
- Applicable wastewater/non-wastewater category and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide).

18. At the time of the inspections, Department staff determined that the LDR notification forms associated with manifest No. 006495380FLE (2/23/12) dealt with the waste listed lines 2 and 3 of the manifest and did not deal with the waste listed on line 1. The wastes listed on lines 1 and 3 of the manifest were D002. The waste listed on line 2 was non-hazardous. However, the LDR notification indicated that the waste listed on line 2 was D002. Therefore, there was no notification for the waste listed on line 1 and contradictory information for the waste listed on line 2, which are in violation of regulations 6 NYCRR 376.1(g)(1)(ii).

Civil Penalties

19. 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

20. 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

In respect to the aforesaid violation, a civil penalty in the amount of THREE THOUSAND TWO HUNDRED FORTY EIGHT DOLLARS (\$3,248) is hereby assessed against the Respondent and shall be payable to the New York State Department of Environmental Conservation by money order or certified check.

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.

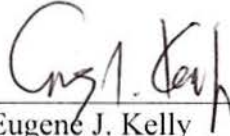
IX. Summary Abatement

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.

Dated: 4/21, 2014
Rotterdam, NY

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

BY:



Eugene J. Kelly
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.

Electro Fiber Technologies, LLC

BY: Robert E. Devalle

TITLE: PRESIDENT

DATE: 4/16/14

STATE OF NEW YORK)

COUNTY OF Schenectady ss.:

On the 16th day of April in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Robert E. Devalle 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.

Karen Rae Zullo

Notary Public

Qualified in the County of:
My Commission Expires:

KAREN RAE ZULLO
Notary Public - State of New York
No. 01ZU5048976
Qualified in Schenectady County
My Commission Expires Sept. 5, 2017