

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

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0853

October 8, 2014

Deborah Pettit
Fortitech Inc.
2105 Technology Drive
Schenectady, New York 12308

Re: Order of Consent
R4-2014-0610-122

Dear Ms. Pettit:

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

This will also acknowledge receipt of \$900 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: H. Brezner

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. R4-2014-0610-122

Fortitech Inc.
2105 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 13, 2014, Department staff conducted an inspection ("inspection") of Fortitech Inc., 2105 Technology Drive, Schenectady, New York ("facility"). The facility has EPA Identification Number NYR000152959.

First Violation

3. Regulations at 6 NYCRR § 371.1(c)(7) require that "*parties who raise a claim that a certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation, based on the intent to reclaim, recycle or reuse, must notify the Department, in writing, before utilizing the exemption or exclusion. Such notification shall give the names and locations of the generating and receiving facilities, if different, identify all exemptions or exclusions that the party is claiming, and describe the activity or activities which are believed to qualify for such exemptions or exclusions.*"
4. At the time of the inspection, Department staff determined that Respondent recycles their used electronics but that they have not filed a notice pursuant to regulations at 6 NYCRR §371.1(c)(7).
5. Respondent violated regulations at 6 NYCRR §371.1(c)(7) by failing to file a notice with the Department based upon recycling their electronics.

Second Violation

6. Regulations at 6 NYCRR §372.2(a)(8)(ii) and (iii) “allows a generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate non-acute hazardous waste on-site for 180 days or less without being subject to the permitting provisions of Part 373 of this Title, provided that:

(a) “the quantity of waste accumulated on-site never exceeds 6,000 kilograms provided that the following requirements are met;

(2) The generator must post the following information next to the telephone:

(ii) location of fire extinguishers and spill control material, and if present, fire alarm;

(iii) the telephone number of the fire department, unless the facility has a direct alarm.”

7. At the time of the inspection, Department staff determined that the information posted in the production area did not include the location of the spill control material.

8. Also at the time of inspection, Department staff determined that the information posted in the lab areas did not contain the fire department telephone number.

9. Respondent violated Regulations at 6 NYCRR §372.2(a)(8)(ii) and (iii) by failing to post the appropriate information in both the production area and the lab areas.

Third Violation

10. Regulations at 6 NYCRR §372.2(b)(2)(ii) provide that “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).

11. At the time of the inspection, Department staff determined that there were 10 manifests including manifest #003558905SKS (1/21/14), that did not have the ultimate disposal code in Box 13, which is required since the receiving TSDF did not provide the ultimate disposal code, which is a violation of regulations at 6 NYCRR §372.2(b)(2)(ii).

Fourth Violation

12. Regulations at 6 NYCRR §372.2(c)(3) requires that “a generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date of shipment must immediately contact the transporter and/or disposal facility to determine the status of the shipment. If within 45 days of the date of shipment the generator has not received a signed copy of the manifest, an exception report must be submitted to the Department and, in the case of interstate shipments, submitted to the state in which the shipment was to be received, and any states in which the shipment may have been delivered. In the case of states which do not have EPA approved hazardous waste programs, notification must be sent to EPA. The exception report must include:

- (i) a legible copy of the manifest for which the generator does not have confirmation of delivery; and
- (ii) a cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.”

13. At the time of the inspection, Department staff observed that the company did not have the signed copy of manifests #006988685FLE (1/31/14) and #03558905SKS (1/21/14) and had not filed exception reports, which is in violation of regulations at 6 NYCRR §372.2(c)(3).

Fifth Violation

14. 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.”

15. At the time of the inspection, Respondent could not produce any written communication to establish that Clean Harbors’ facility located in Reidsville, NC was authorized to handle the hazardous waste listed in the manifest, which is in violation of regulations at 6 NYCRR §372(b)(2)(i).

Sixth Violation

16. 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.”

17. At the time of the inspection, Respondent could not produce any written communication to establish that Safety Kleen and Clean Harbors were authorized to transport hazardous waste, which is in violation of regulations at 6 NYCRR §372.2 (b)(2)(iii).

Seventh Violation

18. Regulations at 6 NYCRR §374-3.2(d)(4)(i) require that “*a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.*”

19. At the time of the inspection, Department staff observed that the company had one box in the maintenance area holding approximately forty, four-foot fluorescent lights. The bottom of the box was open despite no bulbs being added or removed from the box which is in violation of regulations at 6 NYCRR §374-3.2(d)(4)(i).

Eighth Violation

20. Regulations at 6 NYCRR §374-3.2(f)(3) require that a handler must “*be able to demonstrate the length of time that the universal waste has been accumulated by marking the date, maintaining an inventory, or any other method.*”

21. At the time of the inspection, Department staff observed that the company had one box in the maintenance area and was unable to demonstrate how long they had been accumulating used bulbs in the box as it was not marked with an accumulation start date. Respondent’s failure to have an inventory system or other method for tracking when they started accumulating used bulbs in the box is a violation of regulations at 6 NYCRR §374-3.2(f)(3).

Violations Corrected

22. Respondent has corrected violations 1-4 and 7-8 as stated above.

Civil Penalties

23. 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 9 of ECL Article 27.

Waiver of Hearing

24. 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

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. With respect to the aforesaid violation, a civil penalty in the amount of NINE HUNDRED DOLLARS (\$900) 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.

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

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 Respondent's 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: *October 8*, 2014
Rotterdam, NY

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

BY:


Keith Goertz
Acting 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.

Fortitech Inc.

BY: David Peer 

TITLE: NA Quality Manager

DATE: 01 oct 2014

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

On the 1st day of October in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared David Peer, 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.


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

JODY BINKLEY
Notary Public, State of New York
No. 01BI5028035
Qualified in Schenectady County
Commission Expires May 23, 20 15

Schedule of Compliance

1. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, written documentation showing that Safety Kleen and Clean Harbors were authorized to transport hazardous waste.
2. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, written documentation to establish that Clean Harbors' facility located in Reidsville, NC was authorized to handle the hazardous waste listed in the manifest.