

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT

- by -

File No.R4-2009-0414-66

Fuller Road Management Corporation
255-257 Fuller Road
Albany, NY 12202

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, Titles 13 of the Environmental Conservation Law (the "ECL").
2. On February 26, 2009, Department staff performed an inspection ("inspection") of the Fuller Road Management Corporation owned buildings at 255-257 Fuller Road, Albany, NY which house the SUNY, College of Nanoscale Science and engineering("facility").
3. The violations below were observed during this inspection and they have been corrected.
4. Respondent misinterpreted the hazardous waste regulations and treated tanks 1 and 2 as part of one system for regulatory oversight. Both tanks 1 and 2 are, in fact, individually covered by applicable hazardous waste regulations. Violations noted in Paragraphs 12, 13, 14 and 16 are attributable to Respondent's consideration of tanks 1 and 2 as one system.

Violations

5. Respondent violated 6 NYCRR Part 372.2(a)(8)(i)(a) by accumulating waste in six open bags; and failing to label seven one-gallon containers, one bag and one two-liter container with the words "Hazardous Waste" and other words identifying their contents.
6. Respondent violated 6 NYCRR 372.2(a)(8)(ii) by having two tanks and four containers not marked with accumulation dates.
7. Respondent violated 6 NYCRR 373-3.10(c)(1) by not having an assessment report for tank 1.

8. Respondent violated 6 NYCRR 373-3.10(c)(4) by failing to tightness test tank 1 and ancillary equipment prior to being placed in use.
9. Respondent violated 6 NYCRR 373-3.10(c)(4) by failing to inspect tank 1 for weld breaks, punctures, scrapes of the protective coatings, cracks, corrosion, and damage prior to placing the tank in service.
10. Respondent violated 6 NYCRR 373-3.10(f)(1) by failing to document its inspections.
11. Respondent violated 6 NYCRR 373-3.10(f)(3) by failing to maintain records of the facility inspections.
12. Respondent violation 6 NYCRR 373-3.28(c)(1)(i) by failing to inspect their pumps on a monthly basis.
13. Respondent violated 6 NYCRR 373-3.28(c)(1)(ii) by failing to visually inspect their pumps on a weekly basis for liquids dripping from the pump seals.
14. Respondent violated 6 NYCRR 373-3.28(h)(1) by failing to conduct monthly monitoring for leaks from the pumps associated with its hazardous waste storage tanks.
15. Respondent violated 6 NYCRR 373-3.28(i)(1) by failing to monitor the leaking flame arrester and pressure relief valve on the larger hazardous waste storage which may have allowed solvents to evaporate.
16. Respondent violated 6 NYCRR 373-3.28(o)(1) and 373-3.28(o)(2) by failing to note the equipment identification number, management unit identification number, the location of the equipment, type of equipment, the percent-by-weight organics in the waste at the equipment, the physical state of waste at the equipment and whether they were complying with 6 NYCRR 373-3.28. 373-3.29(e)(3).
17. Respondent violated 6 NYCRR 373-3.29(f)(3)(i) by failing to determine the maximum vapor pressure for the tanks.
18. The Respondent violated 6 NYCRR 373-3.29(j)(2) by failing to have a written plan and schedule for inspecting/monitoring equipment.

Waiver of Hearing

19. 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 TEN THOUSAND DOLLARS (\$10,000) for the violations set forth in the Order. The civil penalty is payable 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. Environmental Benefit Project

Respondent shall pay TWENTY THOUSAND DOLLARS (\$20,000) towards an Environmental Benefit Projects (“EBP”) to be determined by the Department. The Department shall provide the Respondent with the name and address of the EBP recipient and the amount to be paid. Respondent shall provide the EBP recipient with a certified check within 10 business days of the Department’s notification to the Respondent of the intended EBP recipient. The Department retains the sole authority to designate the recipient of an EBP. Respondent shall not use the cost of the EBP to reduce its tax liability. As of the effective date of the Order, Respondent shall establish a separate funding source in the amount of \$20,000 to cover the EBP (“EBP account”). The EBP account shall be established for the sole purpose of administering the EBP funds.

III. 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.

IV. 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.

V. 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.

VI. Effective Date

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.

VII. 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.

VIII. 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 Solid and Hazardous Waste Engineer.

IX. Access

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.

X. 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.

XI. Termination

The Order shall terminate upon Respondent's complete compliance with the all the terms, conditions and provisions of the Order.

Date: June , 2009

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 its right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Fuller Road Management Corporation

By: _____
John Loonan President

DATE: _____

STATE OF NEW YORK)
) 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, State of New York