

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

7015 0640 0000 2327 0339

November 4, 2015

Kevin Nichols
The Gorman Group, LLC
200 Church Street
Albany, New York 12202

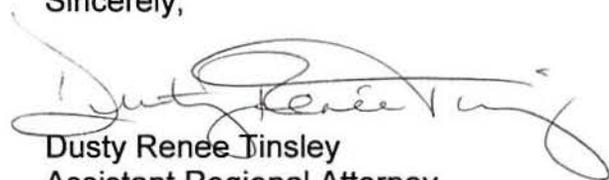
Re: Order of Consent
R4-2015-1001-117
PBS# 1506812

Dear Mr. Nichols

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: M. Franklin



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of the Navigation
Law Article 12

ORDER ON CONSENT

File No. R4-2015-1001-117
Spill #1506812
PBS #4-435120

The Gorman Group, LLC
200 Church Street
Albany, New York 12202,

Respondent,

WHEREAS:

JURISDICTION

1. New York State Department of Environmental Conservation ("DEC") has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 12 of the Navigation Law.

RESPONDENT

2. Respondent The Gorman Group, LLC is the owner and/or operator of a business known as Gorman Brothers located at 446 State Highway 161, Florida, New York ("Site").

SPILL

3. On May 30, 2015, Department staff conducted an inspection of the Site and observed violations of Article 12 of the Navigation Law.

FIRST VIOLATION

4. Navigation Law §12-173 provides that: "The discharge of petroleum is prohibited."

5. Respondent utilizes a collection trench for the collection of wash waters from vehicles and equipment. Citrus cleaner, diesel, and asphalt, among other waste materials, are contained in the wash water.

6. During the May 30, 2015 inspection, Department staff determined that Respondent pumps the trench wash water into a bermed area where the wash water

soaks into the ground.

7. Navigation Law §12-172(15) defines the term petroleum as “oil or petroleum of any kind in any form, including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene”.

8. The trench waste water constitutes petroleum as defined in Navigation Law §12-172(15).

9. Respondent’s discharge of petroleum are violations of Navigation Law §12-173.

SECOND VIOLATION

10. Navigation Law §12-175 provides that: “Any person responsible for causing a discharge shall immediately notify the department pursuant to rules and regulations established by the department, but in no case later than two hours after the discharge. Failure to so notify shall make persons liable to the penalty provisions of section 192 of this article.”

11. On or about May 30, 2015, Department staff determined that Respondent failed to notify the Department of the petroleum discharges.

12. Respondent’s failure to notify the Department of the petroleum discharges are violations of Navigation Law §12-175.

THIRD VIOLATION

13. Navigation Law §12-176 provides: “Any person discharging petroleum in the manner prohibited by section one hundred seventy-three of this article shall immediately undertake to contain such discharge.”

14. On May 30, 2015, Department staff inspected the Site and observed that Respondent had not taken immediate action to clean up the petroleum spills.

15. Respondent’s failure to take immediate action to clean up the petroleum spills are violations of Navigation Law §12-176.

CIVIL PENALTIES

16. Navigation Law §12-192 provides for a civil penalty of up to \$25,000 per day for violations of any provisions of Article 12 of Navigation Law. If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate and distinct offense.

17. **Waiver of Hearing.** Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** In respect to the Order's violations, a civil penalty of FIVE THOUSAND DOLLARS (\$5,000) is assessed against the Respondent for the above violations. FIVE THOUSAND DOLLARS (\$5,000) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department.

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

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** 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 of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VII. **Modification.** The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advise, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the

Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. **Review of Submitted Documentation.** 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Communications.** Communications shall be sent to

For Department:

Matt Franklin
New York State
Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

Kevin Nichols
The Gorman Group, LLC

200 Church Street
Albany, New York 12202

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: Rotterdam, New York
November 4, 2015

Basil Seggos
Commissioner Designee
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent The Gorman Group, LLC 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.

BY: Kevin K. Nichols

TITLE: Senior Vice President

DATE: 10/28/15

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

On the 28th day of October in the year 2015, before me, the undersigned, personally appeared Kevin K. Nichols (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 1719 NY Rte 43 Avenel Park, NY (full mailing address) and that he/she/they is (are) the Vice President (president or other officer or director or attorney in fact duly appointed) of the Gorman Bros., Inc. (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.

Connie M. Hotaling
Notary Public, State of New York

CONNIE M. HOTALING
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ALBANY COUNTY
REG. NO. 01HO5006259
COMMISSION EXPIRES DEC 28, 2018

Schedule of Compliance

1. Within 30 days from the effective date of this Order, Respondent shall retain a qualified consultant to develop a remediation plan ("Plan") for the Site, including, but not limited to:
 - a. a sampling plan to determine areas of petroleum contamination at the Site;
 - b. a remediation plan for remediation of petroleum contamination found at the Site; and
 - c. a plan for proper disposal of excavated petroleum contaminated soils removed during the remediation activities.
2. Within 45 days from the effective date of this Order, Respondent shall submit the Plan to the Department for approval.
3. Within 30 days from the date Respondent receives written approval of the Plan from the Department, Respondent shall implement the Plan.
4. Within 30 days from the effective date of this Order, Respondent shall repair the Hotsy system located at the Site and provide documentation to the Department demonstrating its repair.
5. Within 30 days from the effective date of this Order, Respondent shall retain and have a qualified consultant evaluate the Site for compliance with State Pollutant Discharge Elimination System ("SPDES") regulations and the Petroleum Bulk Storage ("PBS") regulations, including, but not limited to:
 - a. evaluating the Site for compliance with SPDES and PBS regulations;
 - b. take any actions necessary to return Respondent and Site to compliance if a deficiency is noted in the evaluation; and
 - c. provide a report to the Department stating: the findings of the evaluation; the actions taken to obtain compliance where deficiencies were noted; and that the Site is now compliant with all SPDES and PBS regulations.