

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 4646

July 13, 2015

Shannon Montgomery, NCCP
Legal Specialist
1000 Lowe's Boulevard
 Mooresville, NC 28117

Re: Order of Consent
R4-2015-1213-8
Store # 1177

Dear Ms. Montgomery:

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

This will also acknowledge receipt of \$7,800 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Quinn
J. Hadersback
H. Brezner



Department of
Environmental
Conservation

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27
of the Environmental Conservation
Law of the State of New York and
Parts 372 and 374 of Title 6 of
the Official Compilation of the Codes,
Rules and Regulations of the
State of New York

Order on Consent
R4-2015-1213-8
Store #1177

-by-

Lowe's Home Centers, LLC.
1000 Lowe's Boulevard
 Mooresville, NC 28117

Respondent

Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is responsible for hazardous waste transportation, storage, and disposal pursuant to Article 27, Title 9 of the Environmental Conservation Law (the "ECL") and regulations promulgated there under in the Official Compilation of Codes, Rules and Regulations of the State of New York at 6 NYCRR Parts 372 and 374.
2. Respondent, Lowe's Home Centers, LLC., 1605 Curtiss Bridge Road, Wilkesboro, North Carolina 28697 operates a store at 700 Loudon Road, Latham, New York 12110 ("Store #1177"). The Store# 1177 EPA ID Number is NYR000150672.
3. On September 23, 2014, Respondent was issued a Notice of Violation ("NOV") for violations observed during a March 11, 2014 inspection of Store #1177 ("March 11, 2014 inspection").
4. The following violations of the hazardous waste regulations were observed during the March 11, 2014 inspection:

First Violation

5. Regulations at 6 NYCRR 372.2(a)(8)(iv) allow the generator to store hazardous waste for up to 180 days unless the disposal facility is 200 miles or more away. Storage of hazardous waste for up to 270 days is then allowed.

6. At the time of the inspection, Department staff determined that four drums in the Hazardous Materials Storage Cage in the Bull Pen Area were stored on site for longer than 180 days:

One 55 gallon drum of Waste Pesticides was dated August 30, 2013;
One 55 gallon drum of Waste Paint and Stain was dated August 30, 2013;
One 42 gallon drum of Waste Muriatic Acid sweeps was dated January 2, 2012;
and
One 55 gallon drum of Waste Pesticides/Glazing/Corrosives was dated February 25, 2013.

7. The disposal facility is approximately 170 miles away.

8. Respondent violated regulations at 6 NYCRR 372.2(a)(8)(iv) by storing four drums of hazardous waste for over 180 days.

Second Violation

9. Regulations at 6 NYCRR 372.2(a)(8)(i)(a) allow a generator to accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status provided the generator marks the containers with the words "Hazardous Waste" and with other words that identify the contents of the containers.

10. At the time of the inspection, Department staff observed one 55 gallon drum of waste gasoline in the Hazardous Waste Storage Area in the Bullpen Storage Area did not have a label that read '*Hazardous Waste.*'

11. One 1 gallon can of waste gasoline in the Hazardous Waste Storage Area in the Bullpen Storage Area did not have a label that read '*Hazardous Waste.*' Furthermore, the Accumulation Area Pallet adjacent to the receiving office in the warehouse was not labeled with the words '*Hazardous Waste.*' This pallet included 12 spent aerosol cans, four one-gallon cans of paint, one gallon of bleach, and six bags of waste pesticides, all of which were awaiting processing to the Hazardous Waste Storage Cage in the Bull Pen Storage Area.

12. Respondent's failure to properly label the waste as '*hazardous waste*' is in violation of regulations at 6 NYCRR 372.2(a)(8)(i)(a).

Third Violation

13. Regulations at 6 NYCRR Part 376.1(g)(l)(ii) require 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 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 for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.

14. The generator did not identify Underlying Hazardous Constituents for the following manifest tracking numbers: 006941489FLE; 005J55983FLE; 005727261FLE, which is in violation of regulations at 6 NYCRR Part 376.1(g)(l)(ii).

Fourth Violation

15. Regulations at 6 NYCRR 374-3.2(d)(4)(i) requires that the handler must place universal waste lamps in a container that is closed, structurally sound, adequate to prevent breakage compatible with the contents, and must lack evidence of leakage, spillage, or damage.

16. The facility had 31 boxes of spent fluorescent lamps that were open, either by virtue of top flaps not being closed or hand-holes being left open/unsealed, which is in violation of regulations at 6 NYCRR 374-3.2(d)(4)(i).

Fifth Violation

17. Regulations at 6 NYCRR 374-3.2(d)(4)(ii) require that handlers must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment.

18. The facility had (at least) one broken bulb in their Universal Waste Storage Area as evidenced by the lamp glass and white powder on the floor in the back corner of the spent lamp storage area, which is in violation of regulations at 6 NYCRR 374-3.2(d)(4)(ii).

Sixth Violation

19. Regulations at 6 NYCRR 374-3.2(e)(l) require that universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: '*Universal Waste- Battery(ies)*,' or '*Waste Battery(ies)*,' or '*Used Battery(ies)*.'

20. Universal Waste Batteries collection Bin in the Customer Service Area were not labeled with the words '*Universal Waste- batteries*' or '*Used batteries*' or '*Waste Batteries*.'

21. At the time of the inspection, Department staff observed one pallet (30"x30"x10") full of spent 12V Universal Waste Batteries in the Central Receiving Warehouse Area that was not labeled which is in violation of regulations at 6 NYCRR 374-3.2(e)(l).

Seventh Violation

22. 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.

23. At the time of the inspection, the facility had 5 boxes of spent fluorescent lamps in storage in the Central Receiving Area Warehouse that were lacking a date. Furthermore, the facility had one pallet (30"x30"x10") full of spent 12V Universal Waste Batteries in storage in the Central Receiving Area Warehouse that was not dated. Both of these are violations of regulations at 6 NYCRR 374-3.2(f)(3).

Eighth Violation

24. Regulations at 6 NYCRR 374-3.2(h)(l) require a handler to immediately contain all releases of universal waste and other residues from universal waste.

25. At the time of inspection, the facility had (at least) one broken bulb in their Universal Waste Storage Area as evidenced by the lamp glass and white powder on the floor, that had existed there for some time, as evidenced by the dates of the boxes stored atop it (all were from 2013), which is in violation of regulations at 6 NYCRR 374-3.2(h)(l).

Civil Penalty

26. 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

27. Respondent has affirmatively waived the right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained therein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Penalty

In respect of the aforesaid violations, a civil penalty in the amount of SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$7,800). Respondent shall pay the civil penalty by bank check or corporate check with the return of the signed and notarized Order on Consent to the Department. The check shall be sent to the NYS DEC Attn: Assistant Regional Attorney, 1130 North Westcott Road, Schenectady, New York 12306

II. Settlement of Claims and Reservation of Rights

A. This Order settles all claims for criminal, civil and administrative relief, including penalties, concerning the violations described in this Order on Consent against Respondent and its successors (including successors in title), assigns and all persons, subsidiary corporations and affiliated companies.

B. The existence of this Order or the fact that Respondent participated in activities pursuant to this Order shall not give rise to any presumption of law or fact or create any rights which shall inure to the benefit of any third party. For purposes of this provision the State is not considered a third party.

III. Binding Effect

The provisions of this Order on Consent shall inure to the benefit of and be binding upon the Department and Respondent, its successors (including successors in title) and assigns, and all persons, subsidiary corporations and affiliated companies.

IV. Entire Agreement

The provisions hereof shall constitute the complete and entire Order on Consent issued to the Respondent concerning the violations as set forth herein.

V. Effective Date

The effective date of this Order on Consent shall be the date it is signed by the Commissioner or her designee. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order on Consent as soon as practicable after this Order on Consent has been signed by the Commissioner or her designee.

VI. Termination

The Order on Consent shall terminate upon the Department's determination that Respondent has complied fully with the Order on Consent's terms, conditions and provisions.

DATED: *July 13* 2015
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

[Handwritten mark]

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Lowe's Home Centers, LLC.

Authorized Representative JEFF STARVES

SIGNED: [Signature]

TITLE: VICE PRESIDENT STORE OPERATIONS

DATE: 6-22-15

STATE OF NORTH CAROLINA MANAQUETTE

COUNTY OF Worcester)
) ss.:
)

On the 22nd day of June in the year 2015 before me, the undersigned, a Notary Public in and for the State of North Carolina, personally appeared JEFF STARVES 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.

[Signature]

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

