

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 7892

December 8, 2016

John J. Privitera
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York 12207

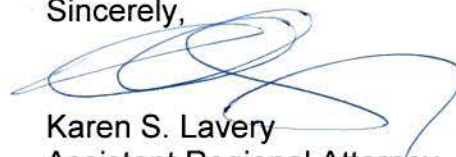
Re: Order on Consent
R4-2016-0310-42
Mac-Son Industrial Services

Dear Mr. Privitera:

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

This will also acknowledge receipt of \$43,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: H. Brezner



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Articles 17, 19, 23, and 27,
of the Environmental Conservation Law (“ECL”);

-by-

ORDER ON CONSENT
File No. R4-2016-0310-42

Mac-Son Industrial Services
105 South Albany Road
Selkirk, NY 12158

Respondent

WHEREAS:

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.
2. The Department has administrative jurisdiction to safeguard the air resources of the State pursuant to ECL Article 19.
3. The Department is responsible for regulation of hazardous waste management pursuant to Article 27, Title 9 of the ECL.
4. The Department is responsible for regulation of used oil management pursuant to Article 23, Title 23 of the ECL.
5. On August 18, 2014, February 10, 2016, and February 16, 2016, Department staff performed inspections of Mac-Son located at 105 South Albany Road, Selkirk, New York (“facility”). The facility has EPA Identification # NYR000152397 and PBS # 4-601467.

Petroleum Bulk Storage (“PBS”) Violations

6 NYCRR 613.3 (b)	Fill Port color coding is missing or incorrect (both above and underground tanks)
6 NYCRR 613.3 (c)(3)(ii)	AST and/or gauge is/was not properly labeled with design capacity, working capacity and ID number
6 NYCRR 613.6 (c)	Monthly Inspection Reports are not being maintained or are not sufficient

Air Violations

6. Regulations at 6 NYCRR §225-2.5(a) provides that *“Except as provided in subdivision (b) of this section, no person may initiate construction of a new emission source, or modification, or operate an air contamination source in which waste fuel is to be burned until all applicable provisions of this Subpart have been met and the necessary permits to construct and/or certificates to operate may have been issued in accordance with Part 201 of this Title.”*
7. Respondent operates a waste oil furnace which constitutes an air contamination source.
8. Respondent violated regulations at 6 NYCRR §225-2.5(a) by operating an air contamination source which failed to meet provisions set forth in 6 NYCRR 225-2.5(b).
9. Respondent did not have a permit to operate the waste oil furnace.
10. Regulations at 6 NYCRR 201-1.2(a) provides that *“Except as otherwise provided by this Part, construction or operation of a new, modified or existing air contamination source without a registration or permit issued pursuant to this Part is prohibited.”*
11. Respondent violated regulations at 6 NYCRR 201-1.2(a) by operation of an air contamination source without a permit.
12. Regulations at 6 NYCRR 225-2.6(d) provide that *“No owner or operator of a facility proposing to burn waste fuel or transporter of waste fuel may purchase, accept delivery, pick up or accept in trade any waste fuel unless the facility receiving or proposing to burn waste fuel meets the applicable requirements of this Subpart and the regulations* promulgated pursuant to article 27, titles 7 and 9 and article 23, title 23 of ECL or to a transporter of waste fuel who is permitted under 6 NYCRR Part 364.”*
13. Respondent violated regulations at 6 NYCRR 225-2.6(d) by receiving and burning waste oil/fuel without meeting all applicable requirements of 6 NYCRR Part 225.

RCRA Violations

14. Regulations at 6 NYCRR Part 613-4.3(e) provide that *“Every facility must maintain records demonstrating compliance with all applicable requirements of this section. These records must include the results of monthly and 10-year inspections. Monthly inspection records must be maintained for at least 3 years. Ten-year inspection records must be maintained for at least 10 years. A copy of the results of tank tightness testing must be submitted to the department within 30 days after performance of the test. At a minimum, the records must list each component tested and describe any action taken to correct an issue.”*
15. At the time of the inspection, facility staff stated that they conduct an inspection of their used oil tank on Monday of each week. However, they failed to record the results of these in an inspection log, which is in violation of regulations at 6 NYCRR Part 613-4.3(e).

16. Regulations at 6 NYCRR Part 374-2.3(d)(1) provide that “*Generators may burn used oil in used oil-fired space heaters provided that: (1) the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourselfer used oil generators*”

17. This facility burns used oil generated from changing the oil in their vehicles on-site. They also burn used oil brought from off-site. They do not test the off-site oil to determine if it meets the specification in the regulations. As a result and because the regulations presume that all used oil is off-specification unless proven otherwise, they are burning off specification oil without an air permit and without complying with Part 374-2.7. This is in violation of regulations at 6 NYCRR Part 374-2.3(d)(1).

18. Regulations at 6 NYCRR Part 360-14.1(b)(7)(ii) provides that transfer facilities that transfer used oil from vehicle to vehicle are exempt from permitting provided that: “*a contingency plan meeting the applicable requirements of section 374-2.6(c)(2) of this Title is in place in case of an emergency during transfer. The contingency plan must be prepared and certified by an individual licensed to practice engineering in the State of New York.*”

19. The facility has a contingency plan however it is missing the following:

- a. A description of the actions facility personnel must take in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, and actions to be taken if the facility is shut down for more than 24 hours;
- b. A description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and Stand and local emergency response teams to coordinate emergency services;
- c. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator.
- d. A list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems [internal and external], and decontamination equipment), where this equipment is required. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- e. An evacuation plan for facility personnel, including a description of signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).

The absence from the contingency plan, of a-e above, are violations of regulations at 6 NYCRR Part 360-14.1(b)(7)(ii). Respondent also violated regulations at 6 NYCRR Part 360-14.1(b)(7)(ii) by failing to have their contingency plan prepared and certified by a New York State registered professional engineer.

20. Regulations at 6 NYCRR Part 374-2.5(g)(1)(vi) provide that: *“Used oil transporters must keep a record of each used oil shipment accepted for transport. In addition, owners and operators of used oil transfer facilities subject to permitting under Part 360 of this Title must maintain copies of all invoices. Records for each shipment must include: (vi) owners and operators of used oil transfer facilities subject to permitting under Part 360 of this Title must include on their shipment records the type of used oil (on-specification or off-specification) and, if on-specification, the method of determination (chemical analysis, pre-characterization, or other).”*

21. At the time of the inspection, Department staff determined that for incoming shipments, the shipping documents used by the facility do not indicate what type (on-specification or off-specification) of oil is being shipped and that for outgoing shipments, the shipping documents used by the facility do not indicate what type (on-specification or off-specification) of oil is being shipped, both of which are violation of regulations at 6 NYCRR Part 374-2.5(g)(1)(vi).

22. Regulations at 6 NYCRR Part 360-14.3(c)(6) provides that *“Unless exempt under the provisions of section 360-14.1(b) of this Subpart, an owner or operator of a used oil collection center or transfer facility must provide the following information to the department in applying for a permit to construct and operate: (6) Draft operations and maintenance manual. An application to construct and operate a used oil collection center or transfer facility must include a draft operations and maintenance manual, which contains all the applicable plans required by this Part.”*

23. Regulations at 6 NYCRR Part 360-1.14(i)(3) and (4) provide that:

“(3) Except as otherwise specified in this Part pertaining to a specific type of solid waste management facility, the facility owner or operator must keep records of all data used to develop or support the permit applications and any supplemental information submitted to comply with the requirements of this Part and pertaining to construction of the facility throughout the active life of the facility and the post-closure period. Records pertaining to the operation of the solid waste facility must be kept for a period of no less than seven years from the date they are made or are required to be made, whichever is later.

(4) The facility owner or operator must retain records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; and copies of all reports required by, or by a permit issued under, this Part) for a period of at least seven years from the date of the sample analysis, measurement, report or application. Existing water quality records must be kept throughout the active life of the facility and the post-closure period. Records for monitoring information must include: the date, exact place, and time of sampling or measurements; the name of the individual who performed the sampling and measurement; the date analyses were performed; the name of the individual who performed the analyses; the analytical techniques or methods used; and the result of such analyses. Additional information relating to the analysis, including records of internal laboratory quality assurance and control, must be made available to the department at its request.”

24. Regulations at 6 NYCRR Part 360-14.3(c)(6) and at 6 NYCRR Part 360-1.14(i)(3) and (4) include the requirement that the results of halogen screening and, if applicable, on-specification determination for each incoming and outgoing shipment of used oil as required by the facility's quality control plan.

25. Respondent violated regulations at 6 NYCRR Part 360-14.3(c)(6) and at 6 NYCRR Part 360-1.14(i)(3) and (4) by failing to record and retain results of every shipment which they contend is tested for halogen using a Dexsil test kit.

Civil Penalties

26. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 thru 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.

27. Section 71-2103 generally provides for a civil penalty of not less than \$375 and not more than \$18,000 for each violation of Article 19 or any code, rule or regulation which was promulgated thereto.

28. 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

29. 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

With respect to the aforesaid alleged violation, a civil penalty in the amount of FIFTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$57,500) is hereby assessed against the Respondent of which FORTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$43,500) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance FOURTEEN THOUSAND DOLLARS (\$14,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by the Respondent.

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 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.

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.

XII. Third Party

This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the State, Department or Respondent.


XIII. Reservations

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affect Respondent's rights to assert all available defenses to any claims, actions, proceedings, suits, causes of actions, audits, demands made or commenced by the State or the Department except as to violations contained in this Order.

Dated: *December 8*, 2016
Rotterdam, NY

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
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.

Mac-Son Industrial Services

BY: 

TITLE: PRESIDENT

DATE: 11-30-16

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

On the 30th day of NOVEMBER in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared SHAWN J. MILLER, 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:

MICHAEL J. BISONE
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ALBANY COUNTY
NO. 4614515 COMMISSION EXPIRES 11/30/17

Schedule of Compliance

Air

1. Effectively immediately upon receipt of this Order, Respondent shall discontinue fueling the waste oil burner with used oil/fuel that was not generated onsite.

PBS

2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, photos and documentation to certify that the fill ports have been color coded, the tanks are properly labeled, and the facility operator is conducting monthly visual inspections - and maintaining a record of those inspections.

3. By the 5th of each month, Respondent shall submit to the Department, a copy of the monthly visual inspection record for the previous month. This shall be required until 3 months after the effective date of this Order.

To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number, and the PBS registration identification number.

RCRA

4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department for review and approval, either: a) A definitive statement indicating that the Respondent will no longer burn any used oil received from off-site or b) A procedure for accepting and burning any used oil received from off-site and an application for a permit under Part 201. This procedure must include:

a. A Standard Operating Procedure ("SOP") for having the used oil, before it arrives at Respondent's facility, analyzed for Arsenic, Cadmium, Chromium, Lead, PCBs, Flash Point and Total Halogens.

b. A method for ensuring that the used oil meets the specification in regulations at 6 NYCRR Part 374-2.2(b) before it arrives at Respondent's facility.

c. A description of what Respondent will do if the used oil does not meet the specification in regulations at 6 NYCRR Part 374-2.2(b).

d. A description of how Respondent will comply with all of the applicable requirements in regulations at 6 NYCRR Part 374-2.8.

5. Within 30 days of the effective date of this Order, Respondent shall submit to the Department for its review and approval, a contingency plan prepared and certified by a New York State registered professional engineer. This plan must include all of the items listed in regulations at 6 NYCRR Part 374-2.6(c)(2)(ii).

6. Within 30 days of the effective date of the Order, Respondent shall submit to the Department, a description of how Respondent will ensure that, for incoming shipments, the shipping documents used by the facility will indicate what type (on-specification or off-specification) of oil is being shipped.

7. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, a description of how Respondent will ensure that, for outgoing shipments, the shipping documents used by the facility will indicate what type (on-specification or off-specification) of oil is being shipped.

8. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, a description of how Respondent will ensure that Respondent records and retains the test results for every shipment tested for halogen for at least seven years.