

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (ECL) Article 19 and
Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York (6 NYCRR),

ORDER ON CONSENT
File No. R4-2009-0219-25

-by-

William Marderosian, Jr.

Respondent

WHEREAS:

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over the protection of the air resources of the State pursuant to Article 19 of the ECL and the rules and regulations promulgated thereto.
2. Respondent, William Marderosian, Jr., owns and operates a dry cleaning business known as Admiral Cleaners, located at 617 19th Street, Watervliet, New York (“facility”). The facility is registered as an air contamination source with an effective date of June 17, 1999.
3. The dry cleaning machine at the facility is a 4th generation dry cleaning machine which uses perc as a cleaning solvent.
4. Respondent is subject to Order on Consent R4-2007-0216-26 (effective on April 6, 2007). The Order contained a Schedule of Compliance which required Respondent to obtain required owner/manager and operator dry cleaning certifications within 60 days of the effective date of the Order. Respondent was required to obtain the certifications by June 5, 2007.
5. On February 3, 2009 Department staff performed an inspection at the facility (“inspection”). The inspection revealed that Respondent did not obtain the required owner/manager and operator dry cleaning certifications.
6. Respondent’s failure to obtain the required owner/manager and operator dry cleaning certifications is a violation of Order on Consent R4-2007-0216-26.
7. 6 NYCRR 232.6(a)(6) requires that a secondary control system must be able to reduce the perc concentration in the drum from 8600 ppm or greater to 300 ppm.

8. A November 29, 2008 third party inspection indicated that the perc concentration in the drum was 845 ppm, which is above the 300ppm limit contained in 6 NYCRR 232.6(a)(6).

9. 6 NYCRR 232.16(j)(2) states if an inspection reveals a leak or malfunction, then the owner or manager or operator must repair the facility and then reinspect within one month.

10. During the Department's February 3, 2009 inspection, Respondent informed Department staff that a contractor removed lint from around the front of the drum of the dry cleaning machine. Respondent also indicated that the machine had not been reinspected, nor was it scheduled to be reinspected to see if it now meets the in drum perc concentration requirements.

11. Respondent's failure to reinspected the dry cleaning machine within one month to see if it now meets the in drum perc concentration requirements is a violation of 6 NYCRR 232.16(j)(2) and 6 NYCRR 232.6(a)(6).

12. A review of records maintained by Respondent indicate that the last hazardous waste shipment was in December 2006.

13. During the inspection, Respondent indicated that lint from the perc dry cleaning machine is vacuumed up using a Shop Vac and then disposed of with the facility's normal trash. Department staff checked the Shop Vac and saw that it was partially full of lint.

14. During the inspection, Respondent indicated that the on-site mister is not used. The water separator on the perc dry cleaning machine is connected to the mister. The container (approximately. 5 gallons) associated with the mister was full of liquid. When the mister was turned on, the high level perc alarm was immediately activated. Respondent could not tell Department staff what happens to the waste water generated by the dry cleaning machine.

15. During the inspection, Respondent indicated that the muck from the dry cleaning machine is put into a container (approximately. 13 gallons) located behind the perc dry cleaning machine via a hose. The container, which is sealed, is connected to the dry cleaning machine by two separate hoses. The container appeared to be full.

16. 6 NYCRR 232.10 sets forth requirements for the proper disposal of any perc-contaminated wastes generated at a facility:

“(a) Any perc-contaminated wastes generated must be managed in accordance with Parts 370 through 376 of this Title. Perc-contaminated wastewater must be handled as provided in section 232.9 of this Part.

(b) All perc-contaminated wastes (including spent cartridge filters, spent carbon, still bottoms, and lint) must be stored in tightly sealed containers, which are impermeable to the solvent, so that no perc is emitted to the atmosphere.

(c) Containers must be appropriately labeled and stored in a designated area.

(d) Containers must be in good condition and must be kept closed except when necessary to add or remove waste.

(e) Receipts or records showing the date and volume of hazardous waste shipments must be retained for five years.”

17. Respondent’s failure to properly dispose of the perc-contaminated waste generated at the facility is a violation of 6 NYCRR Part 232.10.

18. ECL 71-2103 provides for a civil penalty of up to \$15,000 for a violation of any provision of Article 19, or the rules, regulations, or orders of the Commissioner promulgated thereto and an additional penalty of up to \$15,000 for each day during which the violation continues. In the case of a second or further violation, the penalty is up to \$22,500 per day. Injunctive relief is also available.

19. 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 within this Order.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) is hereby assessed against the Respondent. Payment of the civil penalty is due in accordance with the following schedule:

1. \$500 with the return of the signed and notarized copy of this Order;
2. \$500 by May 15, 2009;
3. \$500 by June 15, 2009;
4. \$500 by July 15, 2009;
5. \$500 by August 15, 2009;
6. \$500 by September 15, 2009; and
7. \$500 by October 15, 2009.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

Regional Air Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

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

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

D. 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. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: _____, 2009
Rotterdam, NY

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 issuance and entry of the foregoing Order, waives the right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

William Marderosian, Jr.

Date: _____

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

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, 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 s/he executed the same in his capacity, and that by the 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:

SCHEDULE OF COMPLIANCE

1. Within ninety (90) days of the effective date of this Order, Respondent shall obtain the required dry cleaning owner/manager and operator certifications, hire a certified owner/manager and a certified operator, or cease PERC dry cleaning operations including the proper shutdown of the dry cleaning machine in accordance with the regulations. Copies of the dry cleaning owner/manager and operator certifications or Notice of Equipment Shutdown shall be submitted to the Department.

2. Within thirty (30) days of the effective date of this Order, Respondent shall have the dry cleaning machine reinspected by a Registered Compliance Inspector.

3. Within fifteen (15) days of the effective date of this Order, Respondent shall submit to the Department a copy of the hazardous waste manifest.

4. Within seven (7) days of the effective date of this Order, Respondent shall handle all perc contaminated wastes generated by the dry cleaning machine in accordance with 6 NYCRR Part 232.10 and all other applicable regulations.

5. Within thirty (30) days of the effective date of this Order, Respondent shall cease the operation of the mister including disconnecting the mister from the dry cleaning machine, disposing of all perc contaminated wastes generated in accordance with 6 NYCRR Part 232.10 and all other applicable regulations, and rendering the mister in operable.