

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
7016 0340 0000 4616 8035

March 13, 2017

Mr. Richard J. Dewland
Coffey & Associates
310 South Street
Morristown, NJ 07960

Re: Order on Consent
R4-2016-0608-108
State-Albany Properties, LLC

Dear Mr. Dewland:

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 / JV

Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Drumm
S. Dewes

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Environmental Conservation Law
Article 27 and 6 NYCRR Part 375

ORDER ON CONSENT

R4-2016-0608-108

-by-

State-Albany Properties, LLC
1419 Rosehill Boulevard
Schenectady, New York 12309-1153,

Respondent.

JURISDICTION

1. The Department of Environmental Conservation (“Department” or “DEC”) is an agency of the State charged with jurisdiction over implementing remedial programs, including insuring that public health is not exposed to a significantly increased threat of harm or damage at a site pursuant to Article 27 of the Environmental Conservation Law (“ECL”) and the rules and regulations promulgated thereunder.

RESPONDENT

2. Respondent, State-Albany Properties, LLC, is the owner of property located at 1122 State Street, Schenectady, New York (Schenectady County)(“Site”). The Site is divided into two store fronts. One store front is run by Respondent as a coin operated laundry facility. The other store front is leased by Respondent and operated as a Chinese restaurant.
3. The Site is an inactive hazardous waste site and has been classified as a Class 2 Site.

DEPARTMENT OF HEALTH GUIDELINES

4. The Department of Health (“DOH”) has two guidelines for tetrachloroethene (“PCE” or “PERC”), a guideline for protection of long term exposure over a life time and an immediate remedial action guideline, as follows.
 - a. The protection of long term exposure guideline is 30 mcg/m³.¹
 - b. The immediate remedial action guideline is 300 mcg/m³.

¹ ug/m³ and mcg/m³ are equivalent units of measurement

5. DOH has two guidelines for trichloroethene (“TCE”), a guideline for protection of long term exposure over a life time and an immediate remedial action guideline, as follows.
 - a. The protection of long term exposure guideline is 2 mcg/m³.
 - b. The immediate remedial action guideline is 20 mcg/m³.
6. Exceeding the DOH protection of long term exposure over a life time guidelines indicates the need to take action to reduce exposure because the necessary margin of protection between the guidelines and air levels that have or could cause health effects in humans has been reduced.
7. The DOH recommends taking immediate and effective action to reduce exposure when the immediate remedial action guidelines are exceeded.

VIOLATION

8. 6 NYCRR Part 375-1.11(b)(2)(ii) provides: “It is a violation to engage in any activity that will, or that is reasonably . . . foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site.”
9. One indoor air sample was collected at the Site on October 1, 2015 and two indoor air samples were collected at the Site on October 26, 2015.
10. DOH staff sent to Respondent copies of the indoor air sampling results from the October 1, 2015 and October 26, 2015 samplings by letter dated November 4, 2015 stating results were above DOH guidelines and required action.
11. DEC staff sent Respondent’s counsel a copy of the October 26, 2015 indoor air sampling results by a November 2, 2015 email stating results were above DOH guidelines and required action.
12. The November 2, 2015 email from DEC staff to Respondent’s counsel was followed up with a November 6, 2015 letter from DEC staff attaching the sample testing results for the October 1 and 26, 2015 indoor air sampling stating results were above DOH guidelines and required action.
13. The October 1, 2015 sample testing results were as follows:
 - a. for PCE - 3500 mcg/m³, in excess of the DOH immediate remedial action guidelines for PCE; and
 - b. for TCE - 35 mcg/m³, in excess of the DOH immediate remedial action guideline for TCE.
14. The October 26, 2015 sample testing results were as follows:
 - a. for PCE –

- i. 160 mcg/m³, in excess of the DOH protection for long term exposure guidelines for PCE, and
 - ii. 320 mcg/m³, in excess of the DOH immediate remedial action guidelines for PCE; and
 - b. for TCE - 6.9 mcg/m³, in excess of the DOH protection for long term exposure guidelines for TCE.
15. One indoor air sample was collected at the Site on January 27, 2016.
 16. DEC staff sent Respondent's counsel a February 2, 2016 letter enclosing a copy of the February 1, 2016 Con-Test report regarding the January 27, 2016 sample testing results stating results were above DOH guidelines and required action.
 17. The January 27, 2016 sample testing results were as follows:
 - a. for PCE - 190 mcg/m³, in excess of the DOH protection for long term exposure guidelines for PCE; and
 - b. for TCE - 2.7 mcg/m³, in excess of the DOH protection for long term exposure guidelines for TCE.
 18. One indoor air sample was collected at the Site on February 25, 2016.
 19. DEC staff sent, by email, Respondent's counsel a March 15, 2016 letter enclosing a copy of the March 8, 2016 Con-Test report regarding the February 25, 2016 sample testing results stating results were above DOH guidelines and required action.
 20. The February 25, 2016 sample testing result for PCE was 120 mcg/m³, in excess of the DOH protection for long term exposure guidelines for PCE.
 21. Patrons to the laundry facility and restaurant on Site continue to be exposed to TCE and PCE above DOH guidelines. It is reasonably foreseeable that this exposure will expose public health to a significantly increased threat of harm or damage.
 22. Respondent's actions in allowing the businesses at the Site to continue operating in a manner that is reasonably foreseeable to expose public health to a significantly increased threat of harm or damage at the Site are violations of 6 NYCRR Part 375-1.11(b)(2)(ii).

CIVIL PENALTY

23. ECL §71-2705(1) states that "Any person who violates any of the provisions of, or who fails to perform any duty imposed by titles 9, 11 and 13 of article 27 or any rule or regulation promulgated pursuant thereto, . . . shall be liable in the case of a first violation, for a civil penalty not to exceed thirty-seven thousand five hundred dollars and an additional penalty of not more than thirty-seven thousand five hundred dollars for each day during which such violation continues."

24. **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 for TWENTY THOUSAND DOLLARS (\$20,000) is assessed against the Respondent for the above violations of which FIVE THOUSAND (\$5,000) 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. FIFTEEN THOUSAND DOLLARS (\$15,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance and 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. Communications. Communications shall be sent to

For DEC:

Dusty Renee Tinsley, Esq.
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For DOH:

Tracy L. Hennige, Esq.
New York State Department of Health
Empire State Plaza
Corning Tower Room 2435
Albany, NY 12237

For Respondent:

State-Albany Properties, LLC
Attn. Charles Padula
1419 Rosehill Road
Schenectady, NY 12309

With copy to: Richard Dewland, Esq.
Coffey & Associates
310 South Street #5
Morristown, NJ 17960

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

XIII. This Order settles all violations set forth in the November 23, 2016 Complaint upon payment of the civil penalty and compliance with the Schedule of Compliance. The Notice of Hearing and Complaint in this matter shall be withdrawn as of the effective date of this Order.

DATED: Rotterdam, New York
March 10, 2017

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Respondent shall submit, within 10 days of the effective date of this Order, for review and approval, an approvable plan and schedule for the installation of the permanent remedial measure(s) to reduce indoor air levels of TCE and PCE to as close to background concentrations as practicable ("Plan"). The Plan shall include:

- a. testing to be conducted within five days of implementation of the Plan which demonstrates that the remedial measure(s) implemented reduce indoor air levels of TCE and PCE at a minimum below DOH protection for long term exposure guidelines for TCE and PCE; and
- b. annual indoor air testing and system certification, from the date the testing required in Paragraph 1(a) above is completed, of the remedial measure(s) implement pursuant to the Plan to ensure that the remedial measure(s) remain operational and effective.

The testing and certification required by Paragraphs 1(a) and (b) shall be submitted by Respondent to DOH and DEC staff within three days of receiving the testing results and the certification.

2. Respondent shall, within 10 days of the Department staff's written approval of the Plan, shall implement the Plan.

3. Alternatively, if Respondent does not submit an approvable plan to Department staff within 10 days of the effective date of the Order, all operations at the Site must cease until such time that an approvable Plan is submitted to Department staff, the Plan is approved and implemented, and the initial testing of the remedial measure(s) implemented pursuant to the Plan are tested with results showing reduced indoor air levels of TCE and PCE at a minimum below DOH protection for long term exposure guidelines for TCE and PCE.

4. Respondent may submit a request to DOH staff asking to terminate the remedial measure(s) with documentation that supports termination, for review and approval by DOH staff at DOH staff's sole discretion.