

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott, Schenectady, New York 12306-2014

Phone: (518) 357-2048 § Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3832

November 26, 2013

Terresa M. Bakner
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260

Re: Shelter Enterprises Inc.
Order of Consent
R4-2012-1029-101

Dear Ms. Bakner:

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

This will also acknowledge receipt of \$5000 1st of 7 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$5000 is due on or before January 1, 2014.

Sincerely,

Karen s. Lavery
Assistant Regional Attorney
Region 4

cc: G. McPherson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law
Article 19

Order on Consent
File No. R4-2012-1029-101

-by-

Shelter Enterprises Inc.
8 Saratoga St
P.O. Box 618
Cohoes, New York 12047-0618

Respondent

WHEREAS:

Jurisdiction

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the State pursuant to ECL Article 19.
2. Respondent, Shelter Enterprises Inc., operates a facility located at 8 Saratoga Street, Cohoes, New York, which produces styrene insulation products ("facility").
3. Department staff inspected the facility on September 6, 2012 ("inspection").
4. The facility emits VOC (Volatile Organic Compounds) and HAP (Hazardous Air Pollutants) such as pentane through emission points as part of its production process.
5. An Air State Facility Permit was issued to the facility on June 23, 2011 (4-0103-00057/00002).

First Violation

6. At the time of the September 6, 2012 inspection, Department staff observed that the new steam boiler was operational however the thermal oxidizer was not operational and all the pentane emissions were being vented directly to the atmosphere.
7. Regulations at 6 NYCRR 212.11 (b)(1) provides that "*owners and/or operators of any source equipped with the following emissions control equipment must install continuous monitors and data recorders for the required parameter by June 1, 1995. Continuous monitors must be operated at all times when the associated process equipment is operating except during any quality assurance and routine maintenance activities. Each monitor must be operated*

according to a quality assurance program approved by the department. Alternative monitoring methods may be employed subject to department approval.

(1) The exhaust gas temperature must be monitored from thermal or catalytic incinerators.”

8. Respondent violated regulations at 6 NYCRR 212.11 (b)(1) by failing to operate the thermal oxidizer and intentionally venting the pentane emissions directly to the atmosphere.

Second Violation

9. At the time of the September 6, 2012 inspection, Department staff observed that Respondent failed to install partial total enclosure in the production area and perform required testing on the enclosure and thermal oxidizer as outlined in the facility’s Air State Facility Permit.

10. Regulations at 6 NYCRR §212.11 (a) provide that *“owners and/or operators of any source which is required by the department to demonstrate compliance with this Part must comply with the notification requirements and must conduct capture efficiency and/or stack emissions testing using acceptable procedures pursuant to Part 202 of this Title.”*

11. Respondent violated regulations at 6 NYCRR §212.11 (a) by failing to install partial total enclosure in the production area and perform required testing on the enclosure and thermal oxidizer.

Third Violation

12. At the time of the September 6, 2012 inspection, Department staff observed that the thermal oxidizer was not operational. As the thermal oxidizer was not operational, it prevented the facility from maintaining a level below the facility’s VOC pentane emission cap.

13. Regulations at 6 NYCRR 201-1.7 provide that *“where practical, any person who owns or operates an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device according to the requirements of this Title.”*

14. Respondent violated regulations at 6 NYCRR 201-1.7 by failing to maintain a level below the facility’s VOC pentane emission cap.

Civil Penalty

15. ECL Section 71-2103(1) provides that: ..." any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than five hundred dollars nor more than eighteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided."

Waiver of Hearing

16. Respondent has affirmatively waived its 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 herein.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. Respondent is hereby assessed a civil penalty in the amount of THIRTY THREE THOUSAND DOLLARS (\$33,000). Payment of the civil penalty is due in accordance with the following schedule:

- 1. \$5,000.00 with the return of the Order by November 25, 2013;**
- 2. \$5,000.00 by January 1, 2014;**
- 3. \$5,000.00 by February 3, 2014;**
- 4. \$5,000.00 by March 3, 2014;**
- 5. \$5,000.00 by April 1, 2014;**
- 6. \$5,000.00 by May 1, 2014; and**
- 7. \$3,000.00 by June 2, 2014**

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

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. Environmental Benefit Project

Respondent shall pay FIFTY THOUSAND DOLLARS (\$50,000) toward Environmental Benefit Project ("EBP") primarily for the benefit of the local area. The specific project to be implemented shall be determined by the Department. The Department shall provide the Respondent with the name(s) and address(es) of the EBP recipient(s) and the amount to be paid. Respondent shall provide the EBP recipient with a certified check within 10 business days of the Department's notification to the Respondent of the intended EBP recipient. The Department retains the sole authority to designate the recipient of an EBP. Respondent shall not use the cost of the EBP to reduce its tax liability. Within 30 days of the effective date of the Order, Respondent shall establish an escrow account in the amount of \$50,000 to cover the EBP ("EBP

account”). The EBP account shall be established for the sole purpose of administering the EBP funds.

III. Settlement

Timely payment of the civil penalty and the EBP called for above and full compliance with the terms and conditions of this Order and Schedule of Compliance is accepted as full settlement of the violations described above.

IV. Schedule of Compliance

The attached Schedule of Compliance is incorporated into the Order on Consent.

V. Communications

All communications to the Department except where otherwise specifically directed should be sent to:

New York State Department
of Environmental Conservation
Region 4 - Air Division Attn: RAPCE
1130 North Westcott Road
Schenectady, New York 12306
518-357-2350

VI. Access

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, which relate to the site, 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. Summary Abatement

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.

VIII. Indemnification

Respondent shall indemnify and hold harmless the Department, the State of New York, and its 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.

IX. 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.

X. Document Reviews

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 accepts such modifications as may be specified by the Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves of the revised submittal, the Department may seek to enforce the Order by asserting that Respondent's failure to submit an approvable report is a violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

c. 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 as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modification it specifies will be reasonable and consistent with customary engineering standards.

XI. Effective Date

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

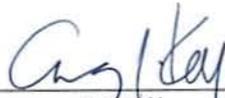
XII. Termination Date

This Order shall terminate upon the Department's determination that the Respondent has complied with the requirements of this Order including but not limited to the civil penalty, payment schedule and the Schedule of Compliance.

DATED: 11/26, 2013
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:


Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Shelter Enterprises Inc.

SIGNED: Kay A Myers
TITLE: Corporate Secretary
DATE: 11/22/13

STATE OF New York

COUNTY OF Albany) ss.:
)

On the 22 day of November in the year 2013, before me, the undersigned, a Notary Public in and for the State, personally appeared Kay A Myers 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.

Michelle M Dragon
Notary Public
Qualified in the County of: Albany
My Commission Expires: 6/4/15

MICHELLE M DRAGON
01DR6167671
Notary Public, State of New York
Qualified in Albany County
My commission expires JUNE 4th, 2015

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall operate the RTO at all times that the facility is in production generating pentane emissions.
2. Within 60 days of the Department's approval of the stack test protocol which has already been submitted by the Respondent, the Respondent shall complete the stack testing in accordance with the approved testing protocol and submit the results to the Department.
3. Within 30 days of the submission of the stack test results to the Department, an engineering evaluation will be submitted to the Department for the purpose of evaluating whether additional capture and control of fugitive pentane emissions is warranted including a schedule for making such improvements on an expedited basis.
4. Upon Department approval of the evaluation identified in No. 3 above, the work shall proceed pursuant to the schedule contained in the evaluation.
5. All approved plans and schedules shall become an enforceable part of the Order. The Respondent shall submit to the Department within 60 days of the completion of the stack test, a request to modify the existing air permit to reflect the air control changes which have resulted from the installation of the RTO, and any measures required by the evaluation.