

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, 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 2620

April 3, 2014

Tecta America WeatherGuard, LLC
Edward Lawless, General Manager
2880 Curry Road
Schenectady, NY 12308

Re: Order on Consent
R4-2013-0819-105

Dear Mr. Lawless:

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,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: J. Quinn
A. Elliott
M. Ellis

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27,
Title 9 of the Environmental Conservation Law;
by

ORDER ON
CONSENT
File No.
R4-2013-0120-12

Tecta America Weather Guard, LLC

Respondent.

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for regulation of hazardous waste management pursuant to Article 27, Titles 9 of the Environmental Conservation Law (the "ECL").

2. On June 10, 2013, Department staff performed an inspection ("inspection") of the Respondent's facility located at 2880 Curry Road, Colonie, New York ("facility"). The mailing address of the facility is 2880 Curry Road, Schenectady, New York 12308.

3. On May 29, 2012 Edward Lawless applied for an EPA identification number on behalf of Weatherguard Tecta America, LLC. The identification number assigned to Weatherguard Tecta America, LLC is NYR000194472.

4. Regulations at 6 NYCRR 371.1(f)7(ii) provides that: "In order for non-acute hazardous waste generated by a conditionally exempt small-quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this subdivision, the generator must comply with the following requirements:

(i) comply with paragraph 372.2(a)(2) of this Title; and

(ii) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he or she accumulates at any time more than a total of 1000 kilograms of their own hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 372 of this Title applicable to generators of between 100 and 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 373 and 376 of this Title, and the applicable notification requirements of section 3010 of RCRA. The time period of 372.2(a)(8)(iii) for accumulation of wastes on-site begins for conditionally exempt small quantity generators when the accumulated wastes exceed 1000 kilograms.."

5. Regulations at 6 NYCRR 372.2(a)(2) provides that: "A person who generates a solid waste must determine if that waste is a hazardous waste....".

Failure to Make a Hazardous Waste Determination

6. Regulations at 6 NYCRR 371.1(f)(7)(i) and 6 NYCRR 372.2(a)(2) require that a generator of hazardous waste make a determination whether a solid waste is a hazardous waste.
7. On June 10, 201, Department staff observed that Respondent failed to determine that its piles of ignitable solid waste stored outside of the building were D001 hazardous materials.
8. Respondent failure to make a determination that piles of ignitable solid waste stored at its facility were D001 hazardous waste are violations of 6 NYCRR 371.1(f)(7)(i) and 6 NYCRR 372.2(a)(2).

Storage of Hazardous Waste Without a Permit

9. Regulations at 6 NYCRR 371.1(f)(7)(ii) provides that a generator of hazardous waste may store up to 1,000 kilograms of non-acute- hazardous waste without a permit.
10. On June 10, 2013, Department staff inspected the facility and observed that Respondent was storing approximately 2,800 kilograms of non-acute- hazardous waste.
11. Respondent's storage of greater than 1,000 kilograms of non-acute- hazardous waste without a permit is a violation of 6 NYCRR 371.1(f) (7) (ii).

Civil Penalties

12. 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 13 of ECL Article 27.

Waiver of Hearing

13. 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

Respondent is hereby assessed a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) for the violations stated herein. The civil penalty is due with the return of the signed and notarized Order. Payment shall be made by bank or company check made payable to the Department of Environmental Conservation.

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, his 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 Region 4, Regional Director of the Department.

V. Effective Date

The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

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. 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.

VIII. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

IX. Access

For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site and records in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

X. Reports and Submissions to be Sent to the Department

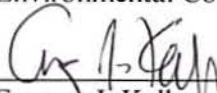
All reports and submissions required by this Order including the Schedule of Compliance shall be made to:

Department of Environmental Conservation
Region 4
c/o Regional Engineer
1130 North Westcott Road
Schenectady, New York 12306

Date: ~~January~~ April 21 2014

Joseph 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 a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Edward T. Lulu
Tecta America Weather Guard, LLC

Title: General Manager

DATE: 3/21/14

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

On the 21 day of March in the year 2014, before me, the undersigned, personally appeared Edward T. Lulu personally known to me who, being duly sworn, did depose and say that he/she/they reside at 1934 The Plaza Schenectady, NY 12309

(Full mailing address)

and that he/she/they is (are) the General Manager
(President or other officer or director or attorney in fact
duly appointed)

of the Tecta America Weather Guard LLC
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Suzanne T. Furlong
Notary Public, State of New York

SUZANNE T. FURLONG
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ALBANY COUNTY
NO. 4945953
COMMISSION EXPIRES JAN. 27, 2015

Schedule of Compliance

1. Within 30 days of the effective date of this Order, Respondent shall, in accordance with all applicable regulations, identify, transport, and dispose of all remaining hazardous wastes stored at the facility, if any.
2. Within 40 days of the effective date of this Order, Respondent shall submit written proof to the Department demonstrating compliance with Paragraph 1 above.