

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Alleged Violations of Article 12, Sections
173 and 175 of the Navigation Law of the State of New York,
ECL Article 27, Title 13 of the Environmental Conservation
Law of the State of New York, and Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State
of New York

Order on Consent
and
Administrative Settlement

CO 2-20190514-182

Site No.:224015

by,

**Dewen Su, Individually and as Responsible
Corporate Officer, and
M & Y Tour Inc.,**

Collectively, Respondents.

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WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, in part, the Environmental Conservation Law ("ECL") § 3-0301 and the Navigation Law ("NL"). In particular, the Department has jurisdiction over the investigation and remediation of inactive hazardous waste disposal sites under ECL Article 27, Title 13 and the regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Part 375.

B. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL §3-0301, ECL Article 27, Title 13, NL Article 12 §§ 173 and 175, and 6 NYCRR Part 375, including 6 NYCRR 375-1.11(b)(2).

2. Respondent M & Y Tour Inc. ("Respondent M & Y") is a domestic business corporation with offices located at 3443 Hyland Blvd., Staten Island, New York 10306.

3. Respondent Dewen Su ("Respondent Su"), an individual, is President of Respondent M & Y and, upon information and belief, is responsible for the day to day operations of Respondent M & Y. Respondent Su's mailing address is 3443 Hyland Blvd., Staten Island, New York 10306.

4. The real property located at 5200 1st Avenue, Brooklyn, NY 11232 is listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* (the "Registry") as Registry No. 224015 (the "Site").

5. The Site is an “inactive hazardous waste disposal site” as defined in ECL § 27-1301(1) and as such, 6 NYCRR Subparts 375-1 and 375-2 apply.
6. The Site is classified in the Registry as a classification “2” indicating the Site poses a significant threat to public health or the environment.
7. The Department has implemented an Interim Remedial Measure on the Site which included demolition of the PCB contaminated on-Site building, excavation of PCB contaminated soils, proper disposal of all hazardous waste, backfill with clean fill, and the placement of a gravel cover. To date the Department has expended some \$11M U.S. Dollars on the Site remedial program. The Department anticipated, after the backfill had time to settle, paving the Site for the control of rainwater infiltration to prevent high levels of PCB contamination remaining on the Site at depth from moving off of the Site due to hydraulic pressure. The design specifications of this paving did not include the parking of any vehicles, light or heavy.
8. 6 NYCRR 375-1.11(b)(2) states that it is a violation to engage in any activity that will, or that is reasonably: (i) anticipated to, prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or (ii) foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site.
9. Respondents entered into a commercial lease for a portion of the Site which term started on November 1, 2018 (the “Lease”). The rider to the Lease states in part “Tenant agrees its use will not destroy the gravel covering, and nothing will be stored on the ground, the use will be for parking of Tour Buses light vehicles and cars all in running condition and licensed and ready to move if necessary.” Additionally, a copy of 6 NYCRR Part 375-1.11(b) is attached to the rider.
10. Based upon Department Staff’s inspections, including photographs, of the Site on January 15, 2019 and on February 14, 2019, Respondents M & Y and Su have caused tour busses to be driven onto and across the unpaved Site for parking and mechanical maintenance which has resulted in ruts in gravel cover and the clean fill, and the ponding of water on the Site; and have undertaken mechanical maintenance of the tour busses which operation is generally sloppy, has no containment, and is allowing contamination of the on-Site gravel cover and the clean soils beneath the cover.
11. The Department alleges Respondents violated 6 NYCRR 375-1.11(b)(2) by causing heavy vehicles to be driven onto and over the Site which resulted in ruts and the ponding of water, and by undertaking mechanical repairs on the Site in a generally sloppy manner, with no containment. All of these actions did or were reasonably anticipated to significantly interfere with an ongoing remedial program.
12. NL Article 12 § 173 prohibits the discharge of petroleum.

13. The Department alleges that Respondents violated NL Article 12, § 173 by causing petroleum spills at the site.
14. NL Article 12 § 175 requires any person responsible for causing a discharge to immediately notify the Department within no later than two hours after the discharge.
15. The Department alleges that Respondents violated NL Article 12, § 175 by failing to timely report the petroleum spills.
16. Respondents consent to the issuance of this Order without an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever.
17. Solely with regard to the matters set forth below, Respondents hereby waive any right to a hearing as may be provided by law, consent to the issuance and entry of this Order, and agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. PENALTY

A. With respect to the civil violations which the Department alleges above against Respondents, the Department, in settlement of any and all such civil violations, hereby assesses against Respondents a total civil penalty in the amount of FIFTEEN THOUSAND U.S. DOLLARS (\$15,000.00). Such penalty shall be payable in twelve monthly installments of \$1,250.00 with the first installment due and payable with the delivery of the Order signed by Respondents. The subsequent payments are due and payable monthly thereafter on the first of each month, commencing on July 1, 2019 and ending May 1, 2020. There shall be no penalty for pre-payment of the penalty.

B. Payments must be made by certified or cashier's check or money order or certified Business check of the Respondents made payable to the order of the New York State Department of Environmental Conservation. In the alternative, Respondent may utilize wire transfer of payments for penalties. Respondents shall submit payments, as required by this Order, to:

Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603
Attn: Rosalie K. Rusinko

II. COMPLIANCE

A. Within 20 Days of the effective date of this Order, Respondents shall submit to the Department for review and comment a Work Plan for the remediation of the various spills on the leased portion of Site, including, removal and proper disposal of stained soils, and the restoration of the surface of the clean fill and the grave cover (the "Remediation Work Plan"). The Remediation Work Plan shall include a schedule of remediation activities and provisions for submittal of reports documenting completion of the significant tasks therein.

B. Within 5 Days of receipt of the Department's comments, Respondents shall submit the revised Remediation Work Plan in approvable form to the Department.

C. Respondents shall implement the Department-approved Remediation Work Plan.

D. Respondents shall provide no less than 48-hours advance notice of any field work pursuant to this Order to the Department. Any schedule changes to field work which result in less than 48-hour notice to the Department must not be implemented without the Department's prior task-specific written approval.

E. Respondents shall submit to the Department daily reports for field work under this Order.

F. Respondents, as part of this settlement, shall cooperate fully with the Department's on-going enforcement efforts related to the Site.

III. RESERVATION OF RIGHTS

A. The Department expressly reserves all rights to any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondents.

B. If, for any other reason, Respondents fail to comply with any of the requirements of this Order, the Department reserves the right to perform the work. Under such circumstances, the Department will either bring administrative enforcement including cost recovery, or refer to the Attorney General a request that the Attorney General pursue Respondents or any of their successors or assigns, for reimbursement to the New York State Environmental Protection and Spill Compensation Fund [New York Navigation Law Article 12] of any costs relating to the work performed by Department plus any applicable fines and/or penalties.

IV. ACCESS

Respondents shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondents' obligations under this Order. If Respondents are unable to gain access to a location, which the Department has determined must be accessed for investigation and/or remediation required under this Order, or unable to obtain building, zoning or wetlands permits for the remediation work, solely at the request of Respondents, the Department agrees, to the extent authorized by law, to assist the Respondents in gaining such access or permits. If, even with the Department assistance, such access is still unavailable to the Respondents, the Department will, to the extent that it deems necessary, legally obtain access for the Department's Contractors to do such work. If the Department has to utilize its Contractors, Respondents shall, within 30 days of receipt of the bills, reimburse the Department for all costs that the State incurs.

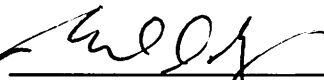
Respondents' inability to gain access to a location, which the Department has determined must be accessed pursuant to this Order, or to obtain any permits necessary for the remediation work, in a timely manner, despite good faith efforts, shall not be deemed non-compliance with this Order.

V. STANDARD PROVISIONS

Respondents will further comply with the standard provisions which are attached hereto, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: 5/14/11

Basil Seggos, Commissioner
New York State Department of
Environmental Conservation

By: 

Michael J. Ryan, P.E.
Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent M & Y Tour Inc. hereby consents to the issuing and entering of this Order without further notice, waive its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

By (Signature): DEWEIN SU

Print Name: Dewen Su

Title: President 5/3/19

Date: 5/3/19

ACKNOWLEDGMENT

STATE OF New York)

) ss:

COUNTY OF Richmond)

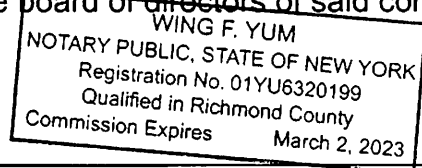
On the 3rd day of May in the year 2019 before me personally came _____ to me known, who, being by me duly sworn, did depose and say that s/he resides in 3473 hylan blvd Staten Island NY 10366 that s/he is the President of M & Y TOUR INC, the corporations described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporations.

[Signature]

FOR NOTARY USE ONLY

Notary Public

Signature and Office of individual taking acknowledgment



CONSENT BY RESPONDENT

Respondent Dewen Su, individually and as a Responsible Corporate Officer, hereby consents to the issuing and entering of this Order without further notice, waive its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

By (Signature): DEWEN SU

Print Name: Dewen Su

Title: President

Date: 5/3/19

ACKNOWLEDGMENT

STATE OF New York)

) ss:

COUNTY OF Richmond)

On the 3rd day of May in the year 2019 before me personally came to me known, who, being by me duly sworn, did depose and say that s/he resides in 3443 hylan blvd Staten Island NY 10306 that s/he is the President of M & Y TOUR INC, the corporations described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporations.

FOR NOTARY USE ONLY

WING F. YUM
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01YU6320199
Qualified in Richmond County
Commission Expires March 2, 2023

Notary Public

Signature and Office of individual taking acknowledgment

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Department of Environmental Conservation, Office of General Counsel, Attn: Rosalie K. Rusinko, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to: NYS Department of Environmental Conservation, Office of General Counsel, Attn: Rosalie K. Rusinko, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603.

Duration. This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Respondent has fully complied with the requirements of this Order.

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, 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.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity. 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 resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modifications. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.