

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Article 17 of New York State Environmental
Conservation Law

- by -

ORDER ON CONSENT

R4-2008-0730-119
PBS # 4-600069

Bettiol Fuel Service, Inc.
PO Box 848, 4966 State Highway 23, Suite 1
Oneonta, NY 13820

Respondent

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.
2. Respondent, Bettiol Fuel Services, Inc., owns and operates a Petroleum Bulk Storage (“PBS”) facility (4-600069) known as Five Star of Oneonta, located at 331 Chestnut Street in Oneonta, NY (Otsego County) (“facility”).
3. On April 29, 2008, Department staff inspected the facility and observed PBS and CBS violations which were noted in a May 2, 2008 Notice of Violation.
4. Respondent violated the regulations noted in the Notice of Violation. All of the violations have been corrected. Respondent has provided the Department with federal tax returns and the Department has considered this financial information in assessing the payable portion of the civil penalty.
5. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 thru 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.
6. 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 it agrees to be bound by the terms, provisions and conditions contained herein.

REMEDIES

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

I Penalty

Respondent is hereby assessed a civil penalty in the amount of FIFTEEN THOUSAND DOLLARS (\$ 15,000) for the violations stated herein, which shall be paid to the Department as follows:

1. Payable

With respect to the violations in this Order, Respondent is hereby assessed a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) payable to the New York State Department of Environmental Conservation by money order, or certified check in accordance with the following schedule:

\$1,000 -with the return of the signed Order;
\$1,000-by March 5, 2009;
\$1,000-by May 5, 2009;
\$1,000-by June 5, 2009; and
\$1,000-by August 5, 2009;

The failure to make a timely payment may cause the entire balance to become due at the discretion of the Department. Payment of the balance for failure to make a timely payment shall be delivered to the Department within 10 days of receipt of written notice. The failure to pay shall also constitute a violation of the Order causing the payment of the suspended penalty and any other relief sought by the Department.

2. Suspended

The balance of the civil penalty TEN THOUSAND DOLLARS (\$10,000) shall be suspended, and shall not be payable provided that the Respondent fully complies with the requirements of the PBS regulations for one year from the effective date of this Order. In the event that the Respondent fails to fully comply with these requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for the violations.

II. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order 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 or the ECL.

III. 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.

IV. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VI. Entire Order

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 Paragraph X of this Order. No informal oral or written advice, 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 obligations to obtain such formal approvals as may be required by this Order.

VII. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

VIII. Reservation of Rights

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.

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 officers, directors, agents, servants, employees, successors and assigns; and

C. 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.

DATED: _____, 2009
Rotterdam, New York

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 issuing and entering of this Order, waives their rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Bettiol Fuel Service, Inc.

Authorized Representative

SIGNED: _____

TITLE: _____

DATE: _____

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

On the ____ day of _____ in the year 200__, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

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

of the _____,
(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.

Notary Public, State of New York