

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
(ECL) Article 19 and Title 6 of the
Official Compilation of Codes, Rules
and Regulations of the State of
New York (6 NYCRR),

ORDER ON CONSENT

- by -

File No. R4-2008-0627-102

R. D. Clark and Sons, Inc
141 Sebethe Dr.
Cromwell, CT 06416

Respondent

WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the control of air quality pursuant to ECL Article 19 and applicable regulations.
2. Respondent, R. D. Clark and Sons, Inc., owns or leases a gasoline transport vehicle, license plate no. AT-33323 ("fuel truck").
3. On June 23, 2008, the fuel truck was delivering fuel to the Getty gas station located at 2248 Broadway in Schenectady, NY (store no. 58877).
4. On June 23, 2008, Department staff observed that the fuel truck's Stage I vapor return line was not connected as the gasoline product was being unloaded.
5. Regulations at 6 NYCRR 230.2 (f)(4) require that "owners and/or operators of gasoline storage tanks, gasoline transport vehicles and gasoline dispensing sites subject to stage I and/or stage II vapor collection or vapor control system requirements must:... connect and ensure proper operation of the stage I and/or stage II vapor collection and control systems whenever gasoline is being loaded, unloaded or dispensed."
6. Respondent violated regulations at 6 NYCRR 230.2 (f)(4) by failing to connect the vapor return line while unloading gasoline product.
7. Regulations at 6 NYCRR 230.2 (f)(5) require that "owners and/or operators of gasoline storage tanks, gasoline transport vehicles and gasoline dispensing sites subject to stage I

and/or stage II vapor collection or vapor control system requirements must:.. with respect to stage I vapor collection systems, connect the stage I vapor collection hose before connecting the gasoline delivery hose to the gasoline transport vehicle, and disconnect the gasoline delivery hose before disconnecting the stage I vapor collection hose from the gasoline transport vehicle;

8. Respondent violated regulations at 6 NYCRR 230.2 (f)(5) by connecting the gasoline delivery hose to the gasoline transport vehicle prior to connecting the stage I vapor collection hose to the gasoline transport vehicle.

9. 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 agree 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. With respect to the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS(\$5,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of 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. Respondent shall indemnify and hold harmless the Department, the State of New York, and their 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.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Air Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

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

X. 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 or permits issued 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 agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. 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. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Upon receipt of this Order, Respondent shall immediately inform all gasoline transport vehicle drivers in its employment, to properly connect Stage I vapor collection devices as described in regulations at 6 NYCRR 230.2 (f) (4), at all times at which gasoline is being delivered.
2. Within 45 days of the effective date of this Order, Respondent shall submit a copy of its employee training plan and all other programs undertaken to ensure compliance with regulations at 6 NYCRR 230.
3. To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number.