

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of the Navigation
Law Article 12 and Environmental
Conservation Law ("ECL") Article 17

ORDER ON CONSENT

File No. R4-2008-1110-156
SPILL #0804605

- by -

North Albany Terminal Company

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("DEC") has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 12 of the Navigation Law and Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated pursuant thereto.
2. Respondent, North Albany Terminal Company, owns and operates a major oil storage facility ("facility") at the NATCO Glenmont, New York terminal.
3. The facility operates pursuant to MOSF license #4-2020 (03/28/07-3/31/12) ("MOSF license").
4. The facility includes tank number 8, an above ground storage tank ("tank") holding denatured ethanol with a design capacity of 2,132,000 gallons. The tank was installed in 1958. Respondent conducted a ten year facility inspection on May 19 July 1, 2005.
5. Respondent's MOSF requires compliance with petroleum bulk system ("PBS") regulations at 6 NYCRR Parts 610, 611, 613, 614; the Oil Spill Prevention and Control Licensing of Major Facilities regulations at 17 NYCRR Parts 30 and 32; and the federal regulations at 40 CFR 280.
6. PBS Regulations at 6 NYCRR 613.6(d) provides that: "If any inspection reveals a leak, a tank or equipment deficiency, a deficiency in monitoring equipment, excessive thinning of the tank shell which would indicate structural weakness when the tank is filled with petroleum, or any other deficiency which could result in failure of the facility to function properly or store and contain the product in storage, remedial measures must be promptly taken to eliminate the leak or deficiency."

Description of the Spill

7. Prior to Respondent filling tank # 8 with denatured ethanol on June 13, 2008, Respondent in 2008 emptied, cleaned and applied an epoxy sealant to tank #8.

8. On July 22, 2008, Respondent reported the spill to the Department based on the observation of denatured ethanol outside the secondary containment system. Respondent first reported a spill of 58,000 gallons and has updated its estimate to be approximately 32,000 gallons.

9. On July 23, 2008, Respondent hired an oil spill remediation contractor to conduct an investigation and remediation of the spill.

10. Denatured ethanol has been found in two facility monitoring wells at a 50% concentration and in four other wells with concentrations ranging from 5 ppm to greater than 30,000 ppm.

Navigation Law Discharge Violation

11. Section 12-173 of the Navigation Law provides that: "The discharge of petroleum is prohibited."

12. Denatured Ethanol, denatured with petroleum, is defined as petroleum in accordance with 6 NYCRR 612.1(c)(21).

13. Respondent violated Navigation Law Section 12-175 by discharging petroleum into the groundwater.

Water Quality Violations

14. The groundwater at the facility is classified as "GA".

15. Regulations at 6 NYCRR 702.15 sets a general organic guidance value limit of 50 ppb standard for individual organic substances that do not have an applicable groundwater standard in 6 NYCRR 703.5.

16. The general organic guidance value applies to denatured ethanol, and it was measured in the well P-2 at 66 ppm and in P-3 it was 92 ppm.

17. Section 17-0501 of the Environmental Conservation Law provides that:

"It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters (waters of the State of New York) organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to Section 17-0301."

18. Respondent violated 6 NYCRR 703.5(f) and ECL Section 17-0501 by discharging denatured ethanol to the groundwater causing ground water levels to exceed standards.

Failure to Timely Notify the Department of Spill

19. Navigation Law Section 175 states, in pertinent part, that: "Any person responsible for causing a discharge shall immediately notify the department pursuant to the rules and regulations established by the department, but in no case later than two hours after the discharge."

20. Regulations at 6 NYCRR 613.8 require that: "Any person with knowledge of a spill, leak and discharge of petroleum must report the incident to the Department within two (2) hours of discovery. The results of any inventory record, test or inspection which shows a facility is leaking must be reported to the Department within two (2) hours of the discovery. Notification must be made by calling the telephone hotline (518) 457-7362."

21. Respondent contends it did timely report the spill upon discovery, but some loss of inventory was detected before reporting.

22. Respondent's failure to timely notify the Department of the discharge of denatured ethanol is a violation of 6 NYCRR 613.8 and Navigation Law Section 175.

Civil Penalties

23. Section 71-1929 of the ECL provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 through 11 of Article 17 of the ECL, or the rules, regulations, orders or determinations of the rules, regulations, orders or determinations of the Commissioner promulgated thereto or the terms of a permit issued thereunder. Injunctive relief is also available.

24. Section 12-192 of the Navigation Law provides for a civil penalty of up to \$25,000 per day for violations of any provisions of Article 12 of Navigation Law: If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate and distinct offense.

25. Section 12-193 of the Navigation Law provides that the remedies available in Article 12 are in addition to those provided by existing statutory law.

26. Section 71-1929 of the ECL provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 through 11 of Article 17 of the ECL, or the rules, regulations, orders or determinations of the rules, regulations, orders or determinations of the Commissioner promulgated thereto or the terms of a permit issued thereunder. Injunctive relief is also available.

Waiver of Hearing

27. Respondent has affirmatively waived their 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 ONE HUNDRED THOUSAND DOLLARS (\$100,000) for the violations stated herein. The civil penalty is payable with the return of the signed and notarized Order. Payment shall be made by bank or certified check or money order made out to the Department of Environmental Conservation.

II. The provisions of this Order shall be deemed to bind Respondent, their officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it.

III. The attached Schedule of Compliance and all plans approved thereunder are incorporated and made part of the terms, conditions and provisions of this Order on Consent.

IV. If, for any reason, Respondent desires that any provisions of this Order be changed, Respondent shall make timely written application to the Department's Region 4 Regional Director setting forth reasonable grounds for the relief sought. No change or modification of this Order shall be made or be effective except as may be specifically set forth in writing by the Department.

V. All reports and submissions herein required herein shall be sent to the Region 4, New York State Department of Environmental Conservation, 1130 North Westcott Road, Schenectady, New York, 12306, Att: Regional Spill Engineer.

Communications with the Respondent shall be sent to: Mr. Ken Fenton, Apex Oil Company, 8235 Forsyth Boulevard, 4th Floor, St. Louis, Missouri 63105-3786; kfenton@apexoil.com, and Linda R. Shaw, Esq., Knauf Shaw LLP, 1125 Crossroads Building, 2 State Street, Rochester, New York 14614, lshaw@nyenvlaw.com.

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

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

VIII. 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.

IX. 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 of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, their directors, officers, employees, servants, agents, successors or assigns.

X. (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 submittals 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 twenty (20) 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. This shall be considered a violation of the Order. The Respondent reserve its right to contest the allege violation.

XI. 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 Navigation Law and the ECL, rules or regulations promulgated thereunder or permits issued thereunder based upon other than existing contamination.

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, their 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 waive 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 on Consent and whether or not this Order on Consent has been entered into voluntarily by Respondent.

DATED: February , 2009
Rotterdam, NY

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 issuance and entry of the foregoing Order, waives their right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

North Albany Terminal Company

Title

Date

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

On the ____ day of _____ in the year 2009 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

SCHEDULE OF COMPLIANCE

1. Respondent has completed a spill investigation to determine the extent of the contamination pursuant to a Department approved plan.
2. By February 28, 2009, Respondent shall submit to the Department for approval a remediation work plan with expeditious schedule for the remediation of the soil, subsoil and groundwater contamination resulting from the spill.
3. Within 15 days of receipt of the Department's notice of approval of the work plan submitted pursuant to paragraph 2 above, Respondent shall begin implementing the approved plan.
4. The Respondent shall perform quarterly sampling of monitoring wells analyzing for ethanol (method to be approved by the Department) and analyzing for petroleum compounds utilizing EPA Method 8021 (STARS list). Sampling will continue until at least one year after demonstrating that the groundwater meets State groundwater standards in 6NYCRR Part 703.5, or an acceptable alternative as determined by the Department.
5. The Respondent shall submit quarterly reports containing, the quarterly sampling described in paragraph 3 above, groundwater elevation data, a groundwater contour map, remedial system operation and maintenance data, and a discussion of the results.
6. The Respondent shall maintain and operate any Department approved remediation system, if any, until the Department approves its suspension or termination.
7. To the extent that any measures undertaken pursuant to the Schedule of Compliance requires treatment and discharge of waste waters to ground waters or surface waters of New York State, or operation of an air point source, Respondent shall be authorized to undertake such treatment and discharge in accordance with the general conditions attached as Appendix A, and the applicable standards contained in Appendix B, notwithstanding any otherwise applicable requirements.
8. No discharge as part of remediation of this portion of the facility shall exceed the air and water effluent limits listed in Appendix B.

APPENDIX A

General Conditions Applicable to All Wastewater Discharges

1. Advance notice shall be given to the Department of any planned changes in the treatment facility or activity which may result in noncompliance with effluent limitations.
2. Any noncompliance which may endanger health or the environment must be reported orally within 24 hours from the time Respondent becomes aware of the circumstances. A written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if it has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent the noncompliance and its recurrence.
3. Bypasses which do not cause a violation of effluent limitations are allowable, but only of essential maintenance, repairs or replacement to assure efficient and proper operation. The Department must be given 5 days advanced written notice of any anticipated bypass. The Department shall be notified within 24 hours of any unanticipated bypass.

Bypass is prohibited, and the Department may take enforcement action, unless:

- the bypass was unavoidable to prevent loss of life, personal injury, public health hazard, or severe property damage;
- there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities or retention of untreated wastes; and
- required notices were sent to the Department and, with the exception of emergency conditions, were accepted by the Department.

“Bypass” means the intentional or unintentional diversion of wastewater around any portion of a treatment facility for the purpose or effect of reducing the degree of treatment intended to be provided by the bypassed treatment facility.

“Severe property damage” means substantial damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass.

APPENDIX B

Water Discharges are to meet the standards listed in the following tables.

	PETROLEUM GW EFFLUENT STANDARD	PETROLEUM SW EFFLUENT STANDARD	SAMPLING FREQUENCY
pH RANGE	6.5 - 8.5	6.5 - 8.5	Monthly
Benzene	1.0 ug/l	1.0 ug/l	“
Ethyl benzene	5.0 ug/l	5.0 ug/l	“
Toluene	5.0 ug/l	5.0 ug/l	“
o-xylene	5.0 ug/l	5.0 ug/l	“
m-xylene	5.0 ug/l	5.0 ug/l	“
p-xylene	5.0 ug/l	5.0 ug/l	“
Mixed Xylenes	5.0 ug/l	5.0 ug/l	“
Napthalene	5.0 ug/l	5.0 ug/l	“
MTBE	10.0 ug/l	10.0 ug/l	“
Ethanol	50.0 ug/l	50.0 ug/l	“

**Soil Vapor Extraction System (SVES)
Benzene Emission Limits**

Stack Height (feet)	Air Flow (cfm)	Maximum Benzene Emissions (ppm-v)	Maximum Benzene Emissions (ug/m ³)	Maximum Benzene Emissions (lbs/hr)
15	50	8.00	26360	0.00494
	100	4.00	13180	0.00494
	150	2.66	8787	0.00494
	200	2.00	6590	0.00494
	250	1.60	5272	0.00494
20	50	14.88	49069	0.00919
	100	7.44	24535	0.00919
	150	4.96	16356	0.00919
	200	3.72	12267	0.00919
	250	2.98	9814	0.00919
25	50	24.10	79458	0.01488
	100	12.05	39729	0.01488
	150	8.03	25486	0.01488
	200	5.02	19864	0.01488
	250	4.82	15892	0.01488
30	50	35.72	117806	0.02206
	100	17.86	58903	0.02206
	150	11.91	39269	0.02206
	200	8.93	29452	0.02206
	250	7.14	23561	0.02206

Air Stripper Benzene Emission Limits

Stack Height (feet)	Water Flow Rate (gal/min)	Maximum Benzene influent (mg/l or ppm)
	10	0.96875
15	25	0.375
	60	0.15625
	100	0.0625
	150	0.0625
20	10	1.8125
	25	0.71875
	60	0.28125
	100	0.1875
	150	0.125
25	10	2.84375
	25	1.125
	60	0.53125
	100	0.28125
	150	0.1875
30	10	4.3125
	25	1.6875
	60	0.71875
	100	0.5
	150	0.28125