

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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. R4-2008-0516-70

Polsinello Fuels, Inc.  
241 Riverside Ave  
Rensselaer, NY 12144

Respondent

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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, Polsinello Fuels, Inc., operates a facility located at 241 Riverside Avenue, Rensselaer, New York ("facility").
3. On March 18, 2008, one of Respondent's fuel tanker trucks (#T-9) was delivering fuel to the USA Gas station located at 2302 Broadway in Schenectady.
4. On March 18, 2008, Department staff observed the tanker's Stage I vapor return line hooked up with the left most vapor return port on the tanker open and not capped.
5. Regulations at 6 NYCRR 230.2 (f)(4) requires 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 6 NYCRR 230.2 (f)(4) by failing to seal the open vapor port resulting in gasoline vapor being released into the atmosphere.
7. 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 violations identified in this Order, Respondent is hereby assessed a civil penalty of FIVE THOUSAND DOLLARS (\$5,000), of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance of the civil penalty (\$2,500) shall be suspended and not payable if Respondent timely completes the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

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:

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Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. Upon the effective date of this Order, Respondent shall inform all gasoline transport drivers employed at Polsinello Fuels Inc., to properly connect Stage I vapor collection devices as described in regulations at 6 NYCRR 230.2, at all times in 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 230.2.
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.