

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 4653

July 14, 2015

Mr. Don Malott
Fleet Operations
Shaker Group, Inc.
862 Albany Shaker Road
Latham, NY 12110

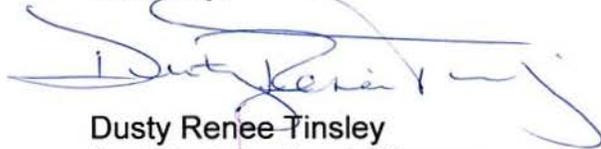
Re: Order of Consent
R4-2015-0618-73
Spill # 1402098

Dear Mr. Malott:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$750 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: M. Franklin
L. Billotto



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violation of the Navigation
Law Article 12

ORDER ON
CONSENT

File No. R4-2015-0618-73
Spill #1402098

Shaker Group, Inc.
862 Albany Shaker Road
Latham, NY 12110

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 ECL Article 17.
2. Respondent, Shaker Group, Inc., located at 862 Albany Shaker Road, Latham, NY 12110, provides freight transportation services.
3. At all times relevant herein, John A. Gallagher was a truck driver for Respondent ("Driver").
4. Cumberland Farms – PBS #4-442860 ("Site"), located at 68 Route 9W, Glenmont, NY 12077, is the owner of a gas station.
5. Section 12-173 of the Navigation Law provides that: "The discharge of petroleum is prohibited."
6. Section 12-175 of the Navigation Law provides that: "Any person responsible for causing a discharge shall immediately notify the department pursuant to rules and regulations established by the department, but in no case later than two hours after the discharge. Failure to so notify shall make persons liable to the penalty provisions of section 192 of this article."
7. Section 12-176 of the Navigation Law provides: "Any person discharging petroleum in the manner prohibited by section one hundred seventy-three of this article shall immediately undertake to contain such discharge."

Spill Number 1402098

8. On May 29, 2014, a diesel spill at the Site was called into the Department.
9. On May 29, 2014, Respondent's Driver, while operating a vehicle owned by the Respondent, propped open a gas dispenser nozzle while pumping diesel into the Respondent's vehicle and overfilled the tank resulting in a spill of diesel at the Site. Driver left the Site. Neither Driver nor Respondent contacted the Department regarding the Spill or immediately undertook to contain the discharge. Department staff inspected the Site on May 29th. The petroleum contamination has been cleaned up. The overflow of petroleum was a discharge of petroleum.
10. Respondent's discharge of petroleum, through the actions of its employee, is a violation of Section 12-173 of the Navigation Law.
11. Respondent's failure to call in the spill is a violation of Section 12-175 of the Navigation Law.
12. Respondent's failure to immediately undertake to contain the discharge is a violation of Section 176 of the Navigation Law.

Civil Penalties

13. 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.

Waiver of Hearing

14. 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 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. In respect of the aforesaid violation, a civil penalty in the amount of SEVEN HUNDRED FIFTY DOLLARS (\$750) is assessed against Respondent. Payment of the civil penalty shall be by bank check made payable to NYSDEC and is due with the return of the signed and notarized Order to the Department.
- II. This Order is deemed effective on the date signed by the Department.

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 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.

DATED: Rotterdam, New York
July 14, 2015

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order on Consent, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Jason Smith
TITLE: Vice President
DATE: 7/13/15

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

On the 13th day of July, 2015, before me, the undersigned,
personally appeared JASON SMITH,
(Full name)

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

862 Albany Shaker Rd, Latham NY 12110
(Full mailing address)

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

of the The Shaker Group Inc.
(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

EDWARD M. SOSSNER
Notary Public, State of New York
No. 02SO6095778
Qualified in Albany County
Commission Expires July 15, 2007 / 2015 (MS)