

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT

- by -

BJ's Wholesale Club, Inc.
One Mercer Road
PO Box 9601
Natick, MA 01760

File No. R4-2008-0623-95
PBS # 4-600714

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, BJ's Wholesale Club, Inc., owns and/or operates a Petroleum Bulk Storage ("PBS") facility (#4-600714) known as BJ's Wholesale Club, located at NYS Route 23 and 28, Oneonta, New York (Otsego County) ("facility").
3. On April 29, 2008, Department staff inspected the facility and observed the following violations:

6 NYCRR 612.2 (d)	Registration information does/did not reflect current site status
6 NYCRR 613.3 (b)	Fill Port color coding is missing or incorrect (both above and underground tanks)
6 NYCRR 613.3 (c) (3) (ii)	AST and/or gauge is/was not properly labeled with design capacity, working capacity and ID number
6 NYCRR 613.3(d)	Leak detection equipment not properly maintained
6 NYCRR 613.3(d)	Failure to maintain cathodic protection system
6 NYCRR 613.5 (a)	Tank was not tightness tested as required
6 NYCRR 613.5 (b)(2) & (4)	Not monitoring cathodic protection system of UST annually or keeping a record

6 NYCRR 613.5 (b)(3) & (4)	Not checking the operability of an electronic leak detections system monthly or keeping a record
6 NYCRR 613.5(b)(4)	No records on the premises
6 NYCRR 613.6 (a) & (c)	Monthly inspection of AST not performed and no records maintained
6 NYCRR 613.9 (b) & (c)	Tank not properly closed permanently (emptied, cleaned and either removed or abandoned) and closure report has not been submitted.
6 NYCRR 614.3 (a)	Improper labeling on post 1986 tank
6 NYCRR 614.5 (b)	Not monitoring interstitial space of double walled tank weekly

4. 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.
5. 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

With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of SEVEN THOUSAND DOLLARS (\$7,000) 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.

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

II. Schedule of Compliance

The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order on Consent and enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, contact and phone number and the PBS registration identification number.

III. Force Majeure

Respondent shall not be in default of compliance with this Order if it is unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war, strike, riot or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify DEC in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

IV. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Spill Engineer. All submittals shall have the following information: owner's name, facility name and address, and the PBS Identification number.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. Modification

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.

X. 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.

XI. Effective Date and Duration

The effective date of this Order shall be the date it is signed by the Regional Director and this Order shall expire when Respondent has fully complied with the requirements of 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

CONSENT BY RESPONDENT

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

BJ's Wholesale Club, Inc.

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF _____)
) 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

SCHEDULE OF COMPLIANCE

1. Within 10 days of the effective date of this Order, Respondent shall properly register the facility and post a valid Registration Certificate at the facility.
2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department the last 3 months of properly reconciled inventory records, the most recent cathodic protection test report, records of monitoring the interstitial spaces, photos showing that the tank labels have been placed on the fill ports, and proof that the unregistered UST has been permanently closed in a proper manner.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department photos and documentation to certify that the fill ports have been color coded, the tanks have level gauges, the tanks are properly labeled, and the facility operator is conducting monthly inspections and maintaining records of those inspections.
4. By the 5th of each month, Respondent shall submit to the Department a copy of the monthly visual inspection records for the previous month. This shall be required until 3 months after the effective date of this Order.

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, and the PBS registration identification number.