

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Articles 17 and 19 of New York State Environmental
Conservation Law and Title 6 of the
Official Compilation of Codes, Rules
and Regulations of the State of
New York ("6 NYCRR")

ORDER ON CONSENT
R4- 2009-0805-127
PBS # 4-601282

-by-

Capital District Ambulance Service, Inc.
89 West Street
Albany, NY 12206

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. The Department has jurisdiction in all matters pertaining to the control of air quality pursuant to ECL Article 19 and applicable regulations.
3. Respondent, Capital District Ambulance Service, Inc., owns and/or operates a Petroleum Bulk Storage ("PBS") facility (4-601282) known as Capital District Ambulance, located at 89 West Street, Albany (Albany County) ("facility").

PBS Violations

4. On August 4, 2009, Department staff inspected the facility for compliance with PBS regulations and observed the following violations:

6 NYCRR 612.2 (c)	New facility is/was not properly registered
6 NYCRR 613.3 (d)	Inadequate maintenance of spill prevention equipment (water in sumps, inoperable alarms, sensors, etc)
6 NYCRR 613.4 (a)	Failure to do reconciliation

6 NYCRR 613.5 (b)(2) & (4)	Not monitoring cathodic protection system of UST annually or keeping a record
6 NYCRR 614.2 (a)	Tank does not have an operational overfill protection
6 NYCRR 614.3 (a)	Improper labeling on post 1986 tank
6 NYCRR 614.7 (d)	As built drawings not maintained on the premises

5. Respondent failed to fully address the identified violations.

Air Violations

6. On July 22, 2009, Department staff inspected the gasoline dispensing site for compliance with Air regulations. Upon removal of the tank top plastic cover on the regular underground tank, Department staff observed vapor emanating around the base of one of the monitoring ports on top of the tank.

7. 6 NYCRR §200.6 provides that *“Notwithstanding the provisions of this Subchapter, no person shall allow or permit any air contamination source to emit air contaminants in quantities which alone or in combination with emissions from other air contamination sources would contravene any applicable ambient air quality standard and/or cause air pollution. In such cases where contravention occurs or may occur, the commissioner shall specify the degree and/or method of emission control required.”*

8. Respondent violated 6 NYCRR §200.6 by permitting vapor to emanate around the base of one of the monitoring ports which emitted air contamination and caused air pollution.

9. At the time of the July 22, 2009 inspection, Department staff observed that the cap on the regular unleaded fill port was broken and the gasket was missing.

10. 6 NYCRR §200.7 provides that *“Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively.”*

11. Respondent violated regulations at 6 NYCRR §200.7 by failing to repair/replace the gasoline fill port cap.

12. At the time of the July 22, 2009 inspection, Department staff observed gasoline vapors emanating from the tank top sump causing air pollution.

13. 6 NYCRR §211.2 provides that *“No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality*

standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.”

14. Respondent’s release of gasoline vapor emanating from the fill port and tank top sump causing air pollution, is a violation of 6 NYCRR 211-2.

15. 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.

16. ECL Section 71-2103(1) provides that: “Except as provided in section 71-2113, any person who violates any provision of Article Nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

17. 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 TEN THOUSAND SIX HUNDRED DOLLARS (\$10,600), of which FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300) 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 (\$5,300) 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. 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 for PBS issues and Attn: Regional Air Pollution Control Engineer for Air issues. All submittals shall have the following information: owner's name, facility name and address, and the PBS Identification number if applicable.

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. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 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; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

IX. 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.

X. 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.

XI. 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.

XII. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XIII. Reservation of Rights

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.

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 officers, directors, agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, 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.

XIV. Multiple Respondents.

If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: _____, 2009
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.

Capital District Ambulance Service, Inc.

SIGNED: _____

TITLE: _____

DATE: _____

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

On the ___ day of _____ in the year _____, 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

PBS

1. Within 10 days of the effective date of this order, Respondent shall submit a PBS application form and appropriate fee to register this facility.
2. Within 30 days of the effective date of this order, Respondent shall submit the last one (1) month of properly reconciled inventory records, the most recent cathodic protection test report, records of monitoring the interstitial spaces, proof that the tank labels have been placed on the fill ports, proof that the overfill protection equipment has been repaired and is operating properly, proof that the fill port sumps have been cleaned, and a copy of the as-built plan(s) for this facility.
3. By the 5th of each month, Respondent shall submit inventory and leak detection 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.

AIR

4. Within 30 days of the effective date of this Order, Respondent shall investigate and repair the source of gasoline vapors which are emanating from the underground gasoline tank and associated connection ports/components. Documentation of findings and repairs shall be submitted to the Department.
5. Within 30 days of the effective date of this Order, Respondent shall replace the fill port cap and gasket and insure that it is properly installed to prevent gasoline vapors from escaping.