

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0891

July 22, 2014

Dean Sommer, Esq.
Young/Sommer LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205

Re: Cumberland Farms, Inc.
Order of Consent
R4-2014-0225-27
PBS# 4-442860

Dear Mr. Sommer:

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

This will also acknowledge receipt of \$20,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: K. Goertz
M. Franklin

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Articles 12 and 17 of New York State
Environmental Conservation Law

ORDER ON CONSENT
R4-2014-0225-27

-by-

PBS # 4-442860

Cumberland Farms, Inc.
100 Crossing Boulevard
Framingham, MA 01702

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 and Article 12 of the NYS Navigation Law.
2. Respondent, Cumberland Farms, Inc., owns and/or operates a Petroleum Bulk Storage (“PBS”) facility (PBS #4-442860) known as Cumberland Gulf #3241, located at 68 Route 9W, Glenmont, NY 12077 (Albany County) (“facility”).
3. On January 29, 2014, February 11, 2014, and February 12, 2014, Department staff inspected the facility.
4. The Respondent has reported spills at the facility, mainly at the diesel pumps, over the last 13 months as evidenced by spill numbers 131691, 1310386, 1309480, 1308543, 214527.

First Violation

5. Regulations at 6 NYCRR 613.3(c)(1) provide that “*shutoff valves for remote pumping units at motor fuel dispensers. All dispensers of motor fuel under pressure from a remote pumping system must be equipped with a shear valve (impact valve) which is located in the supply line at the inlet of the dispenser. This valve must be designed to close automatically in the event that the dispenser is accidentally dislodged from the inlet pipe. A valve meeting the standards set forth in NFPA No. 30A, section 4-3.6 (see subdivision 613.1(g)) meets the requirements of this subdivision.*”

6. At the time of the February 12, 2014 inspection, Department staff determined that the dispenser(s) associated with UST TANK # 10, DISPENSER #27A/28A, is equipped with a shear valve that is improperly installed which is in violation of regulations at 6 NYCRR 613.3(c)(1).

Second Violation

7. Regulations at 6 NYCRR 613.3(a) (1) provide that “*All new underground tanks used in New York State must bear a permanent stencil, label or plate which contains the following information:*

(i) manufacturer's statement that, "This tank conforms with 6 NYCRR Part 614";

(ii) the standard of design by which the tank was manufactured;

(iii) the petroleum products and percentages of volume of petroleum additives which may be stored permanently and compatibly within the tank or reference to a list available from the manufacturer which identifies products compatible with all tank materials;

(iv) the year in which the tank was manufactured;

(v) the dimensions, design and working capacity and model number of tank; and

(vi) the name of manufacturer.”

8. At the time of the February 12, 2014, Department staff determined that UST Tank #8 does not have the appropriate labeling at the fill port which is in violation of regulations at 6 NYCRR 613.3(a) (1).

Third Violation

9. Regulations at 6 NYCRR 613.8 provide 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.”*

10. At the time of the February 12, 2014 inspection, Department staff observed evidence of unreported petroleum spills, specifically, Tank #9, dispensers #21 and 22 and 23/24, the meters were leaking; and Tank #10, dispensers #25A and 26A, the shear valves were leaking, which is in violation of regulations at 6 NYCRR 613.8.

11. At the time of the February 11, 2014 inspection, Department staff observed evidence of unreported petroleum spills, specifically oil soaked speedy dry in and around dispensers #25B/26A and dispenser 25A.

12. At the time of the January 29, 2014 inspection, Department staff observed a fuel spill near dispenser 25A with a large stain on the pavement with speedy dry on it. The spill was unreported and no attempt was made to clean up the speedy dry. The sumps under dispensers #25A and #25B/26A had free product in them.

Fourth Violation

13. Navigation Law Article 12, Section 173 provides that the discharge of petroleum is prohibited.

14. At the time of the inspections, Department staff determined that there have been several recent spills at the store, mainly at the diesel pumps, in the recent past at the site, as evidence by spill numbers 1214527, 1308543, 1309480, 1310386, 1310691 and 1310740. It is also apparent that there have been several unreported spills at the same location. While these spills may be less than 5 gallons, it was obvious by the remaining fuel in the pump sumps and the speedy dry on the pavement that the spills are not being cleaned up within the 2 hour required time frame which is a violation of Navigation Law Article 12, Section 173.

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. 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.

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 TWENTY THOUSAND DOLLARS (\$20,000.00) 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. 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 accepts 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.

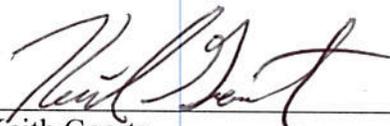
XIV. Multiple Respondents

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: July 21, 2014
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Acting 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.

Cumberland Farms, Inc.

Authorized Representative RAYMOND FLEATHER

SIGNED: Raymond F. Fleather

TITLE: VICE PRESIDENT ENVIRONMENTAL/REGULATORY AFFAIRS

DATE: 7/16/14

Commonwealth
STATE OF Massachusetts)

)
)ss.:
COUNTY OF Middlesex)

On the 16th day of July in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Raymond F. Fleather personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Pamela A. Sinnett
Notary Public

Qualified in the County of: Middlesex
My Commission Expires: 2/9/18



SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, photos and documentation to certify that; all shear valves are properly installed, the diesel dispensers that were leaking have been repaired and are clean and dry, and the labeling at the fill port has been installed.
2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, photos and documentation to certify that; the Veeder Root power light has been replaced, the gasoline/ethanol fill port color codes have a contrasting border to indicate fuel extenders and the replacement of the caps on the stage 1 vapor recovery risers.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a root cause analysis as to the abnormal number of spills that are occurring at this facility. The report should include a thorough and detailed analysis of the root cause of the spills at the facility as well as proposed solutions to the problem.
4. Within 30 days of the Department receiving and approving the root cause analysis, Respondent shall implement the proposed solutions, as well as any solutions that the DEC has proposed.
5. Within 30 days of the effective date of this Order, Respondent shall provide to the Department, both soil and water sampling of the sand filter. The soil (sand) and water in the filter should be sampled using methods 8260 and 8270. If either the soil or water in the filter is found to not meet state standards and/or guidance values, satisfactory remediation of the sand filter will be required.