

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of violations of  
Navigation Law Article 12 (NL) and  
Environmental Conservation Law  
(ECL) Article 17 by:

**ORDER ON CONSENT**  
File No. R4-2009-0109-4

- by -

Greene Trucking, Inc.

Respondent

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WHEREAS:

**JURISDICTION**

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 ("NL") and Article 17 of the Environmental Conservation Law (ECL) and the rules and regulations promulgated pursuant thereto.

**FACTS**

2. Respondent, Greene Trucking, Inc, operates a trucking company located at 1881 State Highway 5S, Amsterdam, New York ("facility").

3. Respondent is a "person" as defined in Section 17-0105 of the ECL and Section 172 of the NL.

4. On December 30, 2008, at 8:30 a.m., one of Respondent's milk tankers was involved in a accident on Gulf Road, in the Town of Richfield, New York ("site"). The vehicle's fuel tanks contained approximately 150 gallons of diesel fuel, which, as a result of the accident, streamed into the roadway. The spill was reported to the NYS Emergency Spill Hotline at 1:07 p.m. (Spill No. 0810904).

## **DISCHARGE OF PETROLEUM**

5. Regulations at Article 12, Section 173 of the NL prohibits the discharge of petroleum.
6. Respondent discharged petroleum at the site.
7. Respondent's discharge of petroleum at the site is a violation of regulations at Article 12, Section 173 of the NL.

## **FAILURE TO NOTIFY THE DEPARTMENT**

8. Regulations at Article 12, Section 175 of the NL 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. Notwithstanding the provisions of any other law, such notification to the department shall be deemed to fulfill the notification requirements of any other state or local law.”*
9. Respondent failed to notify the Department within two hours after the discharge.
10. Respondent's failure to notify the Department within two hours after the discharge is a violation of regulations at Article 12, Section 175 of the NL.

## **FAILURE TO IMMEDIATELY CONTAIN THE DISCHARGE**

11. Regulations at Article 12, Section 176 of the NL provide that: *“Any person discharging petroleum in the manner prohibited by section one hundred seventy-three of this article shall immediately undertake to contain such discharge.”*
12. Respondent failed to take any actions to immediately contain the discharge.
13. Respondent's failure to take actions to immediately contain the discharge is a violation of regulations at Article 12, Section 176 of the NL.

## **GROUNDWATER VIOLATIONS**

14. Regulations at ECL Article 17, Article 17-0501 of the Environmental Conservation Law provides that: *“It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters (waters of the State of New York) organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to Section 17-0301.”*
15. The spilled fuel seeped into the Hyder Creek.
16. The spilled fuel into the Hyder Creek is a violation of regulations at ECL Section 17-0501.

17. 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.

18. NL Section 192 provides that any person who violates any of the provisions of Article 12 of the NL, or any rule promulgated thereunder, or who fails to comply with any duty created by this article, shall be subject to a penalty of not more than twenty-five thousand dollars (\$25,000) for each offense.

### **WAIVER**

19. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law, has consented to the issuance and entry of this Order, and 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. With respect of the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS(\$5,000) is assessed against the Respondent for the above violations 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.

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.

#### 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 violation 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.

DATED: \_\_\_\_\_, 2009  
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. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, documentary evidence to establish that the contractor who cleaned the spill, has been paid in full.