

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

7012 3050 0000 4246 3894

December 18, 2013

Jonathan P. Kaplan
Red-Kap Sales, Inc.
1806 Erie Blvd
Schenectady, NY 12308

Re: Order of Consent
R4-2013-1112-136

Dear Mr. Wilson:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: G. McPherson

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law,
Article 19

Order on Consent
File No. R4-2013-1112-136

-by-

Red-Kap Sales Inc.
1806 Erie Blvd
Schenectady, NY 12308

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
2. Respondent, Red-Kap Sales Inc. is a wholesale fuel distributor located at 1806 Erie Blvd, Schenectady, New York, ("facility").
3. On November 4, 2013, Respondent delivered fuel to the gas station located at Rick's Feed and Fuel located at 8315 Western Turnpike, Duanesburg, New York ("site").

First Violation

4. On November 4, 2013, Department staff observed that during the gasoline fuel delivery, the left most vapor port of Respondent's gasoline transport vehicle (#AR51574) was uncapped and open.
5. Regulations at 6 NYCRR 230.2 (f)(4) require that *"owners and/or operators of gasoline storage tanks, gasoline transport vehicles and gasoline dispensing sites subject to stage I and/or stage II vapor collection or vapor control system requirements must:... connect and ensure proper operation of the stage I and/or stage II vapor collection and control systems whenever gasoline is being loaded, unloaded or dispensed."*
6. Respondent violated regulations at 6 NYCRR 230.2 (f)(4) by failing to connect and ensure proper operation of the stage I vapor collection and control system during the gasoline fuel delivery.

Civil Penalty

7. ECL Section 71-2103(1) provides that: *"... 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 addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

Waiver of Hearing

8. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and have 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 violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is assessed against the Respondent for the above violation. The penalty is due with the return of the signed and notarized Order made payable to the Department of Environmental Conservation by bank check.

II. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

III. This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

V. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VI. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VII. 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, its employees, its servants, its agents, its successors or its assigns.

VIII. 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 or permits issued 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 agents, its servants, its employees, its successors and its assigns;

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

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

X. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 Order.

(1) If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within twenty (20) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

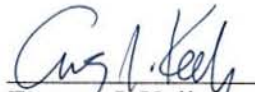
(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. This shall be considered a violation of the Order. The Respondent reserves its right to contest the alleged violation.

XI. 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: 12/17, 2013
Rotterdam, New York

Joseph J. Martens
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 right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Red-Kap Sales Inc.

SIGNED: [Signature]
TITLE: Vice Pres.
DATE: 12/17/13

STATE OF New York

COUNTY OF Schenectady) ss.:

On the 17th day of December in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Jonathan P. Kaplan 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.

[Signature]
Notary Public
Qualified in the County of:
My Commission Expires:

Virginia N. LaFreniere
Notary Public - The State of New York
No. 4927635
Qualified in Schenectady County
My Commission expires April 11, 2014

SCHEDULE OF COMPLIANCE

1. Respondent shall immediately, upon receipt of this Order, inform all gasoline transport vehicle drivers employed at Red-Kap Sales Inc., to properly connect Stage I vapor collection devices, as described in 6 NYCRR 230.2(f)(4), at all times gasoline is being delivered.
2. Within 45 days of the effective date of this Order, Respondent shall submit to the Department, a copy of its employee training plan and all other programs undertaken to ensure compliance with 6 NYCRR Part 230.