

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0402

June 28, 2016

Donald E. Messick
137 Linden Ave
Emerson, NJ 07630

Re: Order on Consent
R4-2016-0425-84
Spill No. 16-006663
South Wind Shipping Corporation

Dear Mr. Messick:

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

This will also acknowledge receipt of \$80,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: ECO B. Canzeri



Department of
Environmental
Conservation

STATE OF NEW YORK: DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of the Navigation
Law Article 12 and Environmental
Conservation Law Article 17

- by -

South Wind Shipping Corporation
Trust Company
Ajeltake Road
Ajeltake Island
Majuro
Marshall Islands

ORDER ON CONSENT
File No. R4-2016-0425-84
Spill No.16-006663

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 and Environmental Conservation Law ECL Article 17.
2. The Department is delegated by the United States Environmental Protection Agency (EPA) with the responsibility for enforcing the National Pollution Discharge Elimination System (NPDES) permitting and water quality standards by New York State Pollution Discharge Elimination System (SPDES) program.
3. The Hudson River at the Port of Rensselaer is a Class C stream.

Respondent

4. Respondent, South Wind Shipping Corporation (IMO 5872871) owns and operates the "South Wind" (IMO 9613226) cargo ship registered in the Marshall Islands that was docked at the Port of Rensselaer ("site") on April 22, 2016.

New York Navigation Law

5. Navigation Law Section §172(8) defines “discharge” to include all *“intentional and unintentional... releasing, spilling, leaking, of petroleum “into the waters of the state or onto lands from which it might flow or drain into said waters....”*
6. Navigation Law §172(18) defines “waters” as including *“all lakes, springs, streams and bodies of surface or ground water.”*
7. Navigation Law §172(15) defines “petroleum” to include *“oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.”*
8. Navigation Law Section §173 states that: *“The discharge of petroleum is prohibited.”*
9. Navigation Law §175 states, in pertinent part, *“Any person responsible for causing a discharge shall immediately notify the department pursuant to the rules and regulations established by the department, but in no case later than two hours after the discharge.”*
10. Navigation Law §176(1) states 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.”*

Clean Water Act

11. ECL §17-0101 declares it is the “public policy of the state of New York to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of fish and wild life, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.”
12. ECL §17-0501 of the ECL states 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.”*

13. ECL §17-0807(4) provides that “*the following discharges into the waters of the state are hereby prohibited... (4) any discharge not permitted by the provisions of this article, rules and regulations adopted or applicable pursuant hereto, the Act.*”

14. Regulations at 6 NYCRR 703.2 prohibit “*visible oil films*” from Class C water bodies.

Used Oil

15. ECL §23-2308(1) of the ECL provides that: “*No person shall engage in the improper disposal of used oil. Used oil shall only be deposited in an available used oil retention facility or disposed of as otherwise authorized or permitted by the commissioner.*”

Spill Number 16-006663

16. On April 22, 2016, Respondent discharged approximately 20 gallons of waste oil from the South Wind to the Hudson River at the Port of Rensselaer which caused a sheen of petroleum to form down current of approximately one hundred or more feet.

Navigation Law Violations

17. Respondent violated Navigation Law §173, §175 and §176(1) by discharging petroleum to the Hudson River, by failing to notify the Department of the discharge and by failing to immediately undertake to clean up the discharge.

Water Quality Violations

18. Respondent violated ECL §17-0501 by discharging petroleum to the Hudson River and creating a visible oil film.

Used Oil

19. Respondent violated ECL §23-2308(1) by improperly disposing of petroleum in the Hudson River.

Civil Penalties

20. Section 71-1929 of the ECL provides for a civil penalty of up to \$25,000 per day for a violation of any provision of Titles 1 through 11 of Article 17 of the ECL, or the rules, regulations, orders or determinations of the rules, regulations, orders or determinations of the Commissioner promulgated thereto or the terms of a permit issued thereunder. Injunctive relief is also available.

21. ECL 71-2201 provides that *“Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 23 of article 23 except the duty to accept used oil pursuant to section 23-2307 or any person subject to section 23-2308 or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this section shall be liable for a civil penalty not to exceed one thousand dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.”*

22. 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.

23. Section 12-193 of the Navigation Law provides that the remedies available in Article 12 are in addition to those provided by existing statutory law.

Waiver of Hearing

24. 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 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 for EIGHTY THOUSAND DOLLARS (\$80,000) is assessed against the Respondent. Payment of the civil penalty shall be made by bank check made payable to NYSDEC and is due with the return of the signed and notarized Order to the Department.

II. This Order is deemed effective on the date signed by the Department.

III. 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, their directors, officers, employees, servants, agents, successors or assigns.

IV. Timely payment of the civil penalty are accepted as full civil settlement of all ECL, Navigation Law, and all other violations related to the April 22, 2016 discharge of petroleum from the to the Hudson River by Respondent.

V. This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of Department indicating an intent to modify this Order.

VI. This Order shall terminate upon the Department's determination that Respondent has complied with all the terms, conditions and provisions of this Order.

VII. This Order on Consent is in full satisfaction of all state administrative, civil and criminal acts that may arise from the facts and circumstances of this matter.

DATED: *June 27*, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
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.

South Wind Shipping Corporation
Trust Company

TITLE: Principal Claims Consent

SIGNED: Donald Edward

DATE: 6/7/16

STATE OF New Jersey

COUNTY OF Bergen) ss.:
)

On the 7 day of June in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Donald Edward 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.

Rebecca Ryan
Notary Public
Qualified in the County of:
My Commission Expires:

REBECCA MARY RYAN
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 7, 2020

