

R 3-20181018

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations of Article 17 of the New York State Environmental Conservation Law, and Part 613 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

ORDER ON CONSENT

-by-

**NYSDEC Case No.
R3-20181018-176**

WILLIAM RICHARDS and FREEFALL EXPRESS, INC.,

Respondents.

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department" or "NYSDEC") is an executive agency of the State of New York with jurisdiction to enforce the environmental laws of the state pursuant to New York State Environmental Conservation Law ("ECL") section 3-0301;

2. The Department is authorized to regulate the storage and handling of petroleum, including petroleum bulk storage ("PBS") facilities, pursuant to Article 17 of the ECL and Title 6, Part 613 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR");

3. It is the Department's responsibility to conserve, improve and protect New York State's natural resources and environment, and control pollution to enhance the health, safety, welfare and overall economic and social well-being of the people of the state;

4. Respondent William Richards owns the property at 45 Sand Hill Road, Gardiner, New York, also known as Gardiner Airport (the "Site"), and is the registered owner and operator of a New York State-regulated PBS facility at the Site registered with the Department as facility number 3-601643, consisting of one 9,000-gallon

aboveground storage tank ("AST") storing jet fuel (the "PBS Facility"); and

5. Respondent Freefall Express, Inc. is a domestic business corporation registered to do business in the State of New York. Respondent William Richards is the Chief Executive Officer of Freefall Express, Inc.

FACTS

6. Beginning on October 6, 2018, the Respondents discharged approximately 2,000 gallons of jet fuel at the Site, contaminating on-Site and off-Site soils, draining into a pond 350 feet away, through a culvert and an unnamed tributary stream, across the Walkkill Valley Rail Trail, and into the Walkkill River where heavy petroleum sheen and odors were observed downstream.

7. On October 7, 2018, an emergency responder at the Site reported the discharge, creating NYSDEC spill number 1807241. Department staff responded to the Site, found that the Respondents had failed to address the discharge, and engaged a state contractor to undertake the containment and cleanup of the spill.

8. On October 8, 2018, a local resident reported additional petroleum impacts to the Walkkill River, creating NYSDEC spill number 1807299.

9. On October 8, 2018, Department staff inspected the PBS Facility and found numerous violations of New York law, set forth below.

APPLICABLE LAW

10. ECL § 71-1929 provides that any person who violates the provisions of Article 17 of the ECL or any rule, regulation or order promulgated thereunder is liable for penalties of up to \$37,500 per day for each violation.

11. ECL § 17-0501 prohibits any person from, directly or indirectly, discharging matter into waters of the State that shall cause or contribute to a condition

in contravention of water quality standards.

12. 6 NYCRR 613-1.9 (a) requires the facility owner to ensure that the facility registration information is current and accurate.

13. 6 NYCRR 613-1.9 (g) requires that the current PBS facility registration certificate be displayed in a conspicuous location at the facility.

14. 6 NYCRR 613-4.1 (b) (1) (ii) requires that every AST have a surface coating designed to prevent corrosion and deterioration.

15. 6 NYCRR 613-4.1 (b) (1) (v) (b) and 6 NYCRR 613-4.1 (c) (1) (ii) require that any AST that has a design capacity of less than 10,000 gallons and is in close proximity to sensitive receptors either have secondary containment or utilize a design/technology such that a release is not reasonably expected to occur.

16. 6 NYCRR 613-4.1 (b) (5) (ii) and 6 NYCRR 4.1 (c) (3) (ii) requires that every dispenser of motor fuel that causes a gravity head must be equipped with a device such as a solenoid valve that is positioned adjacent to and downstream from the operating valve. The valve must be installed and adjusted so that liquid cannot flow by gravity from the AST system in case of piping or dispenser hose failure.

17. 6 NYCRR 613-4.1 (b) (5) (iii) and 6 NYCRR 613-4.1 (c) (3) (iii) require that every fill pipe leading to a pump-filled AST must be equipped with a properly functioning check valve or equivalent device which provides automatic protection against backflow.

18. 6 NYCRR 613-4.1 (b) (5) (iv) and 6 NYCRR 613-4.1 (c) (3) (iv) require that each connection on a gravity-drained AST through which petroleum can normally flow must be equipped with an operating valve to control the flow.

19. 6 NYCRR 613-4.2 (a) (1) requires that every facility must ensure that releases due to spilling or overfilling do not occur.

20. 6 NYCRR 613-4.2 (a) (2) requires that every facility must report, investigate, and clean up any spills and overfills.

21. 6 NYCRR 613-4.3 (a) (2) (i) (b) requires that underground piping installed on or after December 27, 1986 that conveys petroleum under pressure and is part of an AST system storing motor fuel must be equipped with an automatic line leak detector.

22. 6 NYCRR 613-4.2 (a) (3) requires that every AST be marked (for example, with stenciled letters) with the tank registration identification number, as well as the tank design and working capacities.

23. 6 NYCRR 613-4.3 (b) (1) requires that every AST system be inspected monthly, including identification of leaks, cracks, areas of wear, corrosion and thinning, poor maintenance and operating practices, excessive settlement of structures, separation or swelling of tank insulation, malfunctioning equipment, and structural and foundation weaknesses.

24. 6 NYCRR 613-4.4 (a) and 6 NYCRR 613-4.4 (d) (1) require the facility to report a suspected leak to the Department within two hours after discovery of conditions including petroleum outside of an AST system at the facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

25. 6 NYCRR 613-6.2 requires that in response to a release from a tank system, a facility must immediately perform the following initial response actions: (a) identify and mitigate fire, explosion, and vapor hazards; (b) take immediate action to prevent any further release of petroleum; and (c) report the release to Department's Spill Hotline within two hours after discovery.

26. 6 NYCRR 613-6.3 (a) requires the facility to perform initial spill abatement measures.

VIOLATIONS

27. By discharging petroleum to soil and surface waters including the Wallkill River on October 7, 2018 resulting in NYSDEC spill numbers 1807241 and 1807299, the Respondents violated ECL § 17-0501 and 6 NYCRR 613-4.2 (a) (1) – \$18,750 penalty.

28. By failing to report a discharge to the Department immediately on October 6, 2018 the Respondents violated 6 NYCRR 613-4.2 (a) (2), 6 NYCRR 613-4.4 (a), 6 NYCRR 613-4.4 (d) (1) and 6 NYCRR 613-6.2 – \$2,500 penalty.

29. By failing to contain and clean up a discharge immediately, the Respondents violated 6 NYCRR 613-4.2 (a) (2), 6 NYCRR 613-6.2 and 6 NYCRR 613-6.3 (a) – \$2,500 penalty.

30. Department staff found the PBS Facility to be in violation of the following:

- i) 6 NYCRR 613-1.9 (a) by failing to properly register: incorrect information including product stored, tank secondary containment, tank overfill protection, tank spill prevention, pipe type and pipe leak detection – \$1,250 penalty;
- ii) 6 NYCRR 613-1.9 (g) by failing to display the current signed PBS facility registration certificate at the facility – \$100 penalty;
- iii) 6 NYCRR 613-4.1 (b) (1) (ii) by failing to equip one AST with a surface coating designed to prevent corrosion and deterioration – \$1,500 penalty;

- iv) 6 NYCRR 613-4.1 (b) (1) (v) (b) and 6 NYCRR 613-4.1 (c) (1) (ii) by failing to equip one AST in close proximity to sensitive receptors with secondary containment – \$2,000 penalty;
- v) 6 NYCRR 613-4.1 (b) (5) (ii) and 6 NYCRR 4.1 (c) (3) (ii) by failing to equip one dispenser of motor fuel with a device such as a solenoid valve that is positioned adjacent to and downstream from the operating valve – \$1,000 penalty;
- vi) 6 NYCRR 613-4.1 (b) (5) (iii) and 6 NYCRR 613-4.1 (c) (3) (iii) by failing to equip one fill pipe leading to a pump-filled AST at the bottom of the tank with a properly functioning check valve or equivalent device which provides automatic protection against backflow – \$500 penalty;
- vii) 6 NYCRR 613-4.1 (b) (5) (iv) and 6 NYCRR 613-4.1 (c) (3) (iv) by failing to equip one connection on a gravity-drained AST through which petroleum can normally flow with an operating valve at the top to control the flow – \$1,000 penalty;
- viii) 6 NYCRR 613-4.2 (a) (3) by failing to mark one AST with the tank registration identification number, as well as the tank design and working capacities – \$100 penalty;
- ix) 6 NYCRR 613-4.3 (a) (2) (i) (b) by failing to equip underground piping with an automatic line leak detector – \$5,000 penalty; and
- x) 6 NYCRR 613-4.3 (b) (1) by failing to properly inspect one AST system monthly – \$1,500 penalty.

31. Upon execution of this Order on Consent, NYSDEC Environmental

Conservation Police appearance tickets BF4156250, BF4156261 and BF4156272 issued to Respondent Freefall Express, Inc. are withdrawn.

CONSENT

32. The Respondents admit the violations set forth above, waive the right to a hearing in this matter, consent to the issuing and entering of this Order, agree to be bound by its terms, provisions and conditions.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Civil Penalty

A. The Respondents are hereby assessed a civil penalty in the amount of thirty-seven thousand, seven hundred dollars (\$37,700) of which thirty-two thousand, nine hundred and fifty dollars (\$32,950) shall be payable to the Department with the Respondents' signed original of this Order. The NYSDEC case number appearing on the first page of this Order shall be endorsed on the face of the check, payable to the "New York State Department of Environmental Conservation" and forwarded to John K. Urda, Regional Attorney, NYSDEC Region 3, 21 South Putt Corners Road, New Paltz, New York 12561.

B. The remaining amount of four thousand, seven hundred and fifty dollars (\$4,750) shall be suspended contingent on the Respondents' full compliance with the terms of this Order. If the Respondents violate any term of this Order, the suspended penalty shall be due within 10 days of receiving notice of noncompliance from the Department.

II. Full Settlement

Compliance with this Order shall be in full settlement of all claims for civil

penalties by the Department against the Respondents for the above-referenced violations. Any failure to comply with the terms of this Order may subject the Respondents to further enforcement action. Compliance with this Order shall not excuse, nor be a defense to, charges of any violations of law, regulation or permit that may occur after the date of this Order.

III. Inspections

Department representatives shall be permitted access to the subject site and the Facility, including overhead flights by Department-owned unmanned aircraft systems, and to relevant records during reasonable hours to inspect and/or perform such tests and other activities to insure compliance with this Order and applicable law.

IV. Other Approvals

This Order is not a permit, or a modification of a permit, under any federal, state or local laws or regulations. Unless otherwise allowed by law or regulation, the Respondents are responsible complying with all applicable federal, state and local laws, regulations and permits. The Respondents shall obtain whatever permits, easements, rights of entry, approvals or authorizations may be necessary to comply with this Order.

V. Other Remedies; Natural Resource Damages

A. Nothing in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands that the Department may have against anyone other than the Respondents; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against the Respondents, its directors, officers, employees, servants, agents, successors and assigns in the event that the Respondents shall be in breach of their

provisions; (3) the Department's right to bring any action, administratively or at law or in equity, against the Respondents, its directors, officers, employees, servants, agents, successors and assigns which the Department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes from the site or its vicinity, or to require that the Respondents take such additional measures as may be necessary for the protection of public health or the environment, including interim remedial measures; (4) the Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous wastes at or from the site, as those wastes are defined by applicable regulation; or (5) the Respondents' right to challenge any such action by the Department to the extent otherwise permitted by law.

B. Nothing in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the Department's rights or authorities, including the right to recover natural resource damages against any party including the Respondents.

C. This Order shall not be construed to prohibit the Commissioner or the Commissioner's authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. Indemnification

The Respondents or any successors, assigns or transferees, indemnify and hold harmless the Department, the State of New York, any representatives and employees, 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 this Order.

VII. Force Majeure

The Respondents shall not be in default of this Order if unable to comply

because of the action of a national or local government body or court, war, strike, riot or natural disaster, not caused by the negligence or willful misconduct of the Respondents; provided, however, that the Respondents shall use best efforts to comply. The Respondents shall provide written notice to the Department immediately upon obtaining knowledge of such event and shall, within twenty-one days of such event, provide written request to the Department for an extension or modification to this Order, along with documentation evidencing entitlement to such relief. Relief under this clause shall not be available if the Respondents fail to provide timely notice of such event. The Respondents shall have the burden of proving entitlement to relief under this clause by clear and convincing evidence.

VIII. Default of Payment

The penalty assessed in the Order is a debt owed to the State of New York. Failure to pay the penalty, or any part thereof, in accordance with the requirements of this Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), and/or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to the Respondent by the State of New York. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

IX. Entire Agreement

The provisions hereof constitute the complete and entire Order between the

parties concerning the violations set forth above. No change or modification shall be effective except as set forth in writing by the Department. No informal advice, guidance, suggestion or comment by the Department shall be construed as relieving the Respondents of any obligation to obtain such formal approvals required by this Order.

X. Binding Effect

This Order shall bind the Respondents, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for the Respondents including any subsequent operator of the facility, and any successor in title to the facility or any interest therein. The Respondents shall provide a copy of this Order, including any submissions incorporated herein, to any party hired to perform work required under this Order, and shall require compliance with this Order as a term of any contract for performance of such work. The Respondents shall ensure that all work performed under this Order is in compliance with its terms.

XI. Effective Date and Termination

This Order shall become effective when signed on behalf of the Department, and terminate when its requirements are completed to the Department's satisfaction.

Dated: New Paltz, New York
11/6, 2018

BASIL SEGGOS
Commissioner, NYSDEC

By: 
KELLY R. TURTURRO
Regional Director, NYSDEC Region 3



Department of Environmental Conservation

NUMBER 628804

RECEIPT

Region Number 3 Date 11/6/18

Location New Paltz Division Legal Affairs

Received of William Richards & Free Fall Express Inc.

In the amount of Thirty-two thousand nine hundred \$ 32,950.

For Civil Liability - Article 17 fifty and 09/100's

Case # R3-2018-018-176

Cash Department Representative [Signature]

Check Number 6347 Title Secretary

Money Order

ORIGINAL