

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0000 6900 2826

March 25, 2016

Robert J. Fitzsimmons
Columbia County Attorney
401 State Street, Suite 2B
Hudson, NY 12534

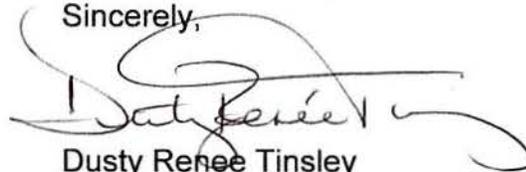
Re: Order on Consent
Columbia County
R4-2016-0120-11
PBS #4-600937

Dear Mr. Fitzsimmons:

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

This will also acknowledge receipt of \$8,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: D. Pickett



Department of
Environmental
Conservation

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

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

ORDER ON CONSENT

-by-

R4-2016-0120-11
PBS # 4-600937

Columbia County
Department of Public Works
401 Hudson Street
Hudson, NY 12534

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 Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereto.

RESPONDENT

2. Respondent, Columbia County, is the owner and/or operator of a Petroleum Bulk Storage ("PBS") facility (4-600937) known as Columbia County Safety located at 85 Industrial Tract, Hudson, NY 12534 (Columbia County) ("Facility").

VIOLATIONS

3. On October 28, 2015, Department staff inspected the Facility and observed the following violations:

6 NYCRR Part 613-2.1 (b)(4)(iii)(a)	As built drawings not maintained on the premises
6 NYCRR Part 613-2.2(a)(5)	Monitoring wells are not properly labeled and/or secured
6 NYCRR Part 613-2.2(b)(2)	Not monitoring cathodic protection system of UST annually

6 NYCRR Part 613-2.3(e)	No leak detection monitoring records on the premises
6 NYCRR Part 613-4.3(a)(1)(i)	Monthly inspection of AST not performed and no records maintained

CIVIL PENALTIES

4. ECL §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.

WAIVER OF RIGHTS

5. 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 it agrees to be bound by the terms, provisions and conditions contained herein.

REMEDIES

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of ELEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$11,250) of which EIGHT THOUSAND DOLLARS (\$8,000) 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. THREE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$3,250) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

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

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** 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 directors, officers, employees, servants, agents, successors or assigns.

VII. **Modification.** 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 the provisions of the 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 obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility 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, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. 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

E. 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.

XI. Review of Submitted Documentation. 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.

XII. **Communications.** Communications shall be sent to

For Department:

Regional Water Engineer
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

Robert Pinto
Columbia County
401 Hudson Street
Hudson, New York 12534

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: March 24, 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a photograph showing that the wells have been permanently marked and identified.
2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a copy of the as-built plans for Tanks #1 and 2.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department the last four weekly monitoring reports for Tanks 1 and 2.
4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department the most recent annual cathodic protection monitoring report for Tanks 1 and 2.
5. Within 30 days of the effective date of this Order, Respondent shall inspect the facility and submit to the Department the inspection records for Tanks 3, 4, and 5.

To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number, and the PBS registration identification number.