

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

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 3710

September 3, 2013

Tom Costa
P.O. Box 46
Mellenville, NY 12544

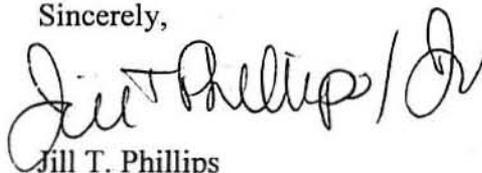
Re: Order on Consent
R4-2013-0430-67
PBS# 4-600762

Dear Mr. Costa:

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

This will also acknowledge receipt of \$1500 the civil penalty pursuant to Paragraph I.

Sincerely,



Jill T. Phillips
Assistant Regional Attorney
Region 4

Enclosure

cc: D. Pickett

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of
Article 17 of New York State Environmental
Conservation Law

**ORDER ON
CONSENT**

R4-2013-0430-67
PBS # 4-600762

-by-

Tom Costa

Respondent

WHEREAS:

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 ECL and the rules and regulations promulgated thereto.
2. Respondent, Tom Costa, owns and/or operates a Petroleum Bulk Storage (“PBS”) facility (#4-600762) known as Costa’s Used Cars, Inc., which is located at 790 Gahbauer Road, Mellenville, New York (Columbia County) (“facility”).
3. On August 8, 2012, Department staff inspected the facility and observed the following violations:

6 NYCRR 612.2(2)	Facility is not properly registered. The registration expired on April 5, 2011
6 NYCRR 612.2(e)	The registration was not posted at the facility.
6 NYCRR 613.3(b)	Fill Port color coding is missing or incorrect (for both aboveground and underground tanks).
6 NYCRR 613.3(c)	The AST does/did not have a gauge, high level alarm or overflow prevention valve.
6 NYCRR 613.3(c)(3)(ii)	The AST and or gauge is/was not properly labeled with design capacity, working capacity and ID number.
6 NYCRR 613.6(a) and (c)	Monthly inspections of the AST not performed and no records maintained.

4. 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.

5. Respondent has affirmatively waived his 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 in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, his agents, employees, and all persons, firms, corporations acting under or for him.

III. The terms of 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.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their 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 the provisions hereof by Respondent, his employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

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

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, his 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 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. A. 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 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 thirty (30) 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. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

X. 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 and the PBS registration identification number.

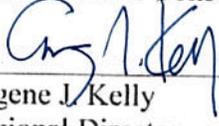
XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: Rotterdam, New York

9/3, 2013

Joseph 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 his rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

SIGNED: 
Tom Costa

DATE: 8/14/13 8/27/13

STATE OF New York)
COUNTY OF Columbia)ss.:

On the 27th day of August in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Thomas P. Costa 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.

Mary J. Hoose
Notary Public

MARY J. HOOSE
Notary Public, State of New York
No. 01HO5045454
Qualified in Columbia County
Commission Expires June 19, 2015

Schedule of Compliance

1. Within 10 days of the effective date of this Order, Respondent shall submit to the Department a completed PBS application and photo documentation that the PBS certificate is properly displayed at the facility. The completed application must include the unregistered tank and correct any information about the owner, operator or other tanks at the facility.
2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department photos and documentation certifying that the fill ports have been color coded, the tanks are properly labeled, the monthly visual inspections are being conducted and records of those inspections are being maintained and the overfill protection has been repaired/replaced as needed.

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 and phone number and the PBS registration identification number.