

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 4769

August 25, 2015

David S. Merzig, City Attorney
City of Oneonta
Department of Law
City Hall, 258 Main Street
Oneonta, NY 13820-2589

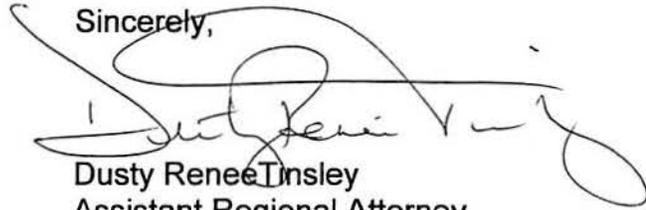
Re: Order of Consent
R4-2015-0615-70
PBS#4-484814

Dear Mr. Merzig:

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

cc: T. Lane



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

R4-2015-0615-70-
 PBS # 4-484814

Owner: City of Oneonta
 City Hall
 258 Main Street
 Oneonta, NY 13820

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 and registration of Petroleum Bulk Storage (“PBS”) pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.
2. Respondent, City of Oneonta, owns and/or operates a PBS facility (4-484814) known as Oneonta Municipal Airport, located at 391 Airport Road, Laurens, NY 13820 (Otsego County) (“facility”).
3. On December 9, 2014, Department staff inspected the facility and observed the following violations:

CITATIONS	VIOLATIONS
6 NYCRR 612.2 (d)	Registration information does/did not reflect current site status
6 NYCRR 613.3 (b)	Fill Port color coding is missing or incorrect (both above and underground tanks)
6 NYCRR 613.3 (c) (1)	Shear Valve on pressurized piping is not secured properly or not operational
6 NYCRR 613.3 (c) (3) (iii)	Above ground storage tank (“AST”) and/or gauge is/was not properly labeled with design capacity, working capacity and ID number
6 NYCRR 613.4	No daily and/or ten day reconciliation performed (five yrs. worth must be made available)
6 NYCRR 613.5 (b)(3) & (4)	Not checking the operability of an electronic leak detections system monthly or keeping a record
6 NYCRR 613.6 (a) & (c)	Monthly inspection of AST not performed and no records maintained
6 NYCRR 614.7 (d)	As built drawings not maintained on the premises
6 NYCRR 614.9 (a)	AST does not meet 6 NYCRR Part 614 standards

6 NYCRR 614.14	Underground piping systems do not meet 6 NYCRR Part 614 standards
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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 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, having considered this matter and being duly advised, it is ORDERED that:

I. Penalty

With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of FIFTEEN THOUSAND DOLLARS (\$15,000) of which FIVE THOUSAND DOLLARS (\$5,000) 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. TEN THOUSAND DOLLARS (\$10,000) 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

The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order 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.

III. Communications

All communications required herein shall be made to: Department - DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Spill Engineer; and City of Oneonta, City Engineer, 258 Main Street, Oneonta, NY 13820. All submittals shall have the following information: owner's name, facility name and address, and the PBS registration identification number.

IV. Access

Respondent shall allow duly authorized representatives of DEC 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 or the ECL.

V. Summary Abatement

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.

VI. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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. Review of Submittals

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 accepts 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.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

IX. Modification

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.

X. Entire Order

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 Paragraph IX of this 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 obligations to obtain such formal approvals as may be required by this Order.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Reservation of Rights

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

1. 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.

2. 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 officers, directors, agents, servants, employees, successors and assigns;

3. 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

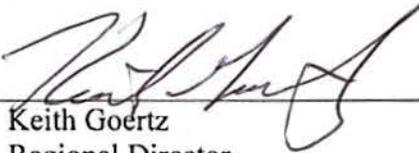
4. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, or causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes 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.

DATED: Rotterdam, New York

August, 25 2015

Marc Gerstman
Acting Commissioner
New York State Department of
Environmental Conservation

BY:

A handwritten signature in black ink, appearing to read "Keith Goertz", is written over a horizontal line.

Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

City of Oneonta

SIGNED: Russell A. Southard

TITLE: Mayor of the City of Oneonta

DATE: August 20, 2015

STATE OF New York

COUNTY OF OTSEGO)
)ss.:
)

On the 20th day of AUGUST in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Russell A. Southard 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.

Douglas Kendall
Notary Public
Qualified in the County of: OTSEGO
My Commission Expires: 01/06/2018

DOUGLAS KENDALL
NOTARY PUBLIC STATE OF NEW YORK
OTSEGO COUNTY REG. NO. 01KE6295363
COMMISSION EXPIRES 01/06/2018

SCHEDULE OF COMPLIANCE

Actions to be taken	Deadline
Submit to the Department ten day reconciliation forms to Department staff for thirty days following the repair and/or recalibration of the Veeder Root.	Within sixty days of the effective date of this Order.
Submit to the Department four weeks of completed liquid status reports for the automatic tank gauge.	Within sixty days of the effective date of this Order.
Submit to the Department documentation that the shear/impact valve on Tank #1 is correctly installed.	Within sixty days of the effective date of this Order.
Submit to the Department documentation that as-built drawings for the facility are located at the facility.	Within sixty days of the effective date of this Order.
Submit to the Department documentation demonstrating that the annual functionality test has been completed on the Automatic Line Leak Detection.	Within sixty days of the effective date of this Order.

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.