

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 of the
New York State Environmental Conservation Law (ECL) and
Title 6 of the Official Compilation of Codes, Rules and
Regulations of the State of New York (6 NYCRR),

**RULING ON MOTION
FOR ORDER WITHOUT
HEARING**

- by -

DEC Case Nos.
R2-20130521-196
R2-20160927-328
R2-20180410-105

A.A. TRUCK RENTING CORP.,

Respondent.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Grace H. Nam, Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- No appearance for respondent

PROCEEDINGS

By notice of motion for order without hearing in lieu of complaint dated September 27, 2018, staff of the New York State Department of Environmental Conservation (Department) commenced this enforcement proceeding against respondent A.A. Truck Renting Corp. (respondent) for alleged violations of former 6 NYCRR parts 612 and 613 and current 6 NYCRR part 613 at respondent's petroleum bulk storage (PBS) facilities located at 355 Food Center Drive, Bronx, New York (Food Center Drive) and 500 Oak Point Avenue, Bronx, New York (Oak Point Avenue).

Inasmuch as respondent is an active domestic business corporation in the State of New York, service of the notice of motion and supporting papers on respondent was made by personally serving the New York State Department of State on November 2, 2018 (*see* affidavit of service of Ellen Shupe Bell, sworn to November 2, 2018). Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of motion and supporting papers to respondent by first class mail on December 18, 2018 (*see* affidavit of service of Regina Seetahal, sworn to December 18, 2018). Respondent failed to file a response to the motion, as directed in the notice of motion.

Department staff alleges respondent violated the following:

1. a. Former 6 NYCRR 612.2(a)(2) for failing to renew the PBS registration of the Food Center Drive facility;
b. Current 6 NYCRR 613-1.9(c) for failing to renew the PBS registration of the Oak Point Avenue facility;
2. Current 6 NYCRR 613-1.9(a) for failing to maintain a current and accurate PBS registration for the Food Center Drive facility;
3. Former 6 NYCRR 612.2(e) for failing to display a current and valid PBS registration at the Food Center Drive facility;
4. Former 6 NYCRR 613.3(b)(1) for failing to properly color code the fill port associated with underground storage tank (UST) #002 at the Food Center Drive facility;
5. a. Former 6 NYCRR 613.5(a) for failing to test UST #002 for tightness within five years from the date of the previous test at the Food Center Drive facility;
b. Current 6 NYCRR 613-3.3(b)(1)(i) for failing to test UST #002 for tightness at yearly intervals at the Food Center Drive facility;
6. a. Current 6 NYCRR 613-2.3(b)(2)(i)(a)(2) for failing to conduct an annual line tightness test on the pressurized piping associated with UST #001 at the Oak Point Avenue facility;
b. Current 6 NYCRR 613-2.3(b)(2)(i)(a)(2) for failing to conduct an annual line tightness test on the pressurized piping associated with UST #002 at the Oak Point Avenue facility;
7. a. Former 6 NYCRR 613.5(a)(4) for failing to submit the results of the periodic tightness test for UST #001 at the Food Center Drive facility;
b. Current 6 NYCRR 613-2.3(e)(1) for failing to maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with UST #001 at the Oak Point Avenue facility;
c. Current 6 NYCRR 613-2.3(e)(1) for failing to maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with UST #002 at the Oak Point Avenue facility;
d. Current 6 NYCRR 613-2.3(e)(3) for failing to submit the results of the annual line tightness test on the pressurized piping associated with UST #001 at the Oak Point Avenue facility;
e. Current 6 NYCRR 613-2.3(e)(3) for failing to submit the results of the annual line tightness test on the pressurized piping associated with UST #002 at the Oak Point Avenue facility; and
8. Current 6 NYCRR 613-2.5(f) for failing to maintain adequate records for the Class A, Class B, and Class C Operators at the Oak Point Avenue facility.

Staff's papers consist of a notice of motion dated September 27, 2018, the affirmation of Grace H. Nam, Esq. dated September 27, 2018 (Nam Affirmation), attaching eight exhibits and the affidavit of Lesnek Zielinski, P.E. sworn to September 27, 2018 (Zielinski Affidavit), attaching six exhibits (*see* Appendix A attached hereto).

Respondent has not responded to staff's motion papers, although a response was due by November 22, 2018 (*see* 6 NYCRR 622.12[c]).

Staff requests that the Commissioner issue an order: (i) finding that respondent violated the regulations as set forth above; (ii) imposing a civil penalty of \$88,050 on respondent; (iii) directing respondent to bring the Food Center Drive and Oak Point Avenue facilities into compliance with all relevant ECL and NYCRR provisions immediately; and (iv) granting such other and further relief as may be deemed just, proper and equitable (*see* Nam Affirmation at 17, Wherefore Clause).

FINDINGS OF FACT

1. Respondent A.A. Truck Renting Corp. (respondent) is the owner of a petroleum bulk storage facility having a capacity of over 1,100 gallons located at 355 Food Center Drive, Bronx, New York. In particular, the following PBS tanks are located at the facility: PBS tank #001 with a capacity of 4,000 gallons, is located underground and contains diesel fuel, and PBS tank #002 with a capacity of 1,000 gallons, is located underground and contains #2 fuel oil. (*See* Nam Affirmation ¶ 3, Exhibit B, PBS Facility Information Report and PBS Certificate; Zielinski Affidavit ¶ 5.)
2. Respondent is the owner of a petroleum bulk storage facility having a capacity of over 1,100 gallons located at 500 Oak Point Avenue, Bronx, New York. In particular, the following PBS tanks are located at the facility: PBS tank #001 with a capacity of 4,000 gallons, is located underground and contains diesel fuel; PBS tank #002 with a capacity of 4,000 gallons, is located underground and contains diesel fuel; PBS tank #003 with a capacity of 2,200 gallons, is located aboveground and contains #2 fuel oil; PBS tank #004 with a capacity of 275 gallons, is located aboveground and contains lube oil; PBS tank #005 with a capacity of 275 gallons, is located aboveground and contains lube oil; and PBS tank #006 with a capacity of 550 gallons, is located aboveground and contains waste oil/used oil. (*See* Nam Affirmation ¶ 4, Exhibit C, PBS Facility Information Report and PBS Certificate; Zielinski Affidavit ¶ 6.)
3. Respondent A.A. Truck Renting Corp. is an active domestic business corporation (*see* Nam Affirmation ¶ 2, Exhibit A, NYS Department of State Entity Information).
4. Leszek Zielinski is an environmental engineer 2 and the supervisor of the bulk storage unit of the Department's Division of Environmental Remediation in DEC Region 2 (*see* Zielinski Affidavit ¶ 1).
5. As part of his duties, Mr. Zielinski inspects major oil storage facilities (MOSF), and chemical bulk storage (CBS) and PBS facilities for compliance with ECL article 17 and the PBS regulations (*see* Zielinski Affidavit ¶ 3).
6. On May 7, 2013, Peter Lawler, a contracted Department inspector, who is no longer affiliated with the Department, inspected the Food Center Drive facility and prepared an

- inspection report (2013 Inspection Report) (*see* Zielinski Affidavit ¶ 7, Exhibits A and B).
7. After his inspection, Mr. Lawler prepared a notice of violation dated June 4, 2013 (2013 NOV) and served it on respondent (*see* Zielinski Affidavit ¶ 8, Exhibits A and B).
 8. During his inspection, Mr. Lawler found:
 - A. Respondent failed to display a current and valid PBS registration certificate (*see* Zielinski Affidavit ¶ 9 (i), Exhibits A [2013 NOV at 1; Inspection Report #1, Q1 (page 7), unnumbered picture 10] and B).
 - B. Respondent failed to timely renew the PBS registration for the facility (*see* Zielinski Affidavit ¶ 9 (ii), Exhibits A [2013 NOV at 1; Inspection Report #2, Q1 (page 7), unnumbered pictures 1 and 10] and B).
 - C. Respondent failed to color code the fill port for UST #002 (*see* Zielinski Affidavit ¶ 9(iii), Exhibits A [2013 NOV at 2; Inspection Report #11, Q11 (page 7), unnumbered picture 6] and B).
 - D. Respondent failed to perform tightness testing on UST #002 (*see* Zielinski Affidavit ¶ 9 (iv), Exhibits A [2013 NOV at 2; Inspection Report #17, Q17 (page 7)] and B).
 - E. Respondent failed to submit a tightness test report for UST #001 (*see* Zielinski Affidavit ¶ 9 (v), Exhibits A [2013 NOV at 2; Inspection Report #17] and B).
 9. Respondent failed to resolve the violations noted in the 2013 NOV (*see* Zielinski Affidavit ¶ 10).
 10. On May 4, 2016, William Batista, a contracted Department inspector, who is no longer affiliated with the Department, inspected the Food Center Drive facility and prepared an inspection report (2016 Inspection Report) (*see* Zielinski Affidavit ¶ 11, Exhibit C).
 11. After his inspection, Mr. Batista prepared a notice of violation dated June 2, 2016 (2016 NOV) and served it on respondent (*see* Zielinski Affidavit ¶ 12, Exhibit D).
 12. During his inspection, Mr. Batista found:
 - A. Respondent failed to maintain a current and valid PBS registration certificate (*see* Zielinski Affidavit ¶ 13 (i), Exhibits C [Inspection Report #3 and page 8] and D [2016 NOV at 1]).
 - B. Respondent failed to perform tightness testing on UST #002 (*see* Zielinski Affidavit ¶ 13 (ii), Exhibits C [Inspection Report #52 and page 8] and D [2016 NOV at 2]).
 13. Respondent failed to resolve the violations noted in the 2016 NOV (*see* Zielinski Affidavit ¶ 14).

14. On January 18, 2018, Tony Ye, a Department inspector, who is no longer affiliated with the Department, inspected the Oak Point Avenue facility and prepared an inspection report (2018 Inspection Report) (*see* Zielinski Affidavit ¶ 15, Exhibit E).
15. After his inspection, Mr. Ye prepared a notice of violation dated April 6, 2018 (2018 NOV) and served it on respondent (*see* Zielinski Affidavit ¶ 16, Exhibit F).
16. During his inspection, Mr. Ye found:
 - A. Respondent failed to timely renew the PBS registration for the facility (*see* Zielinski Affidavit ¶ 17 (i), Exhibits E [Facility Information Report; 2018 Inspection Report #3] and F [2018 NOV at 1]).
 - B. Respondent failed to properly maintain records of the annual functionality test for the automatic line leak detector on the pressurized piping associated with USTs #001 and #002 (*see* Zielinski Affidavit ¶ 17 (ii), Exhibits E [2018 Inspection Report #43] and F [2018 NOV at 1]).
 - C. Respondent failed to properly maintain records for the Class A, Class B and Class C operators of the Oak Point Avenue Facility (*see* Zielinski Affidavit ¶ 17 (iii), Exhibits E [2018 Inspection Report ##45-47] and F [2018 NOV at 2]).
 - D. Respondent failed to submit a tightness test report for the underground piping associated with USTs #001 and #002 (*see* Zielinski Affidavit ¶ 17 (iv), Exhibits E [2018 Inspection Report #34] and F [2018 NOV at 2]).
17. Respondent failed to resolve the violations noted in the 2013 NOV (*see* Zielinski Affidavit ¶ 18).
18. The 2013 and 2016 NOVs directed respondent to correct each violation and submit evidence of the corrective action within thirty days from the date of each NOV (*see* Zielinski Affidavit ¶ 19, Exhibits B and D).
19. The 2018 NOV directed respondent to correct each violation and submit evidence of the corrective action by the deadlines listed in the 2018 NOV (*see* Zielinski Affidavit ¶ 20, Exhibit F).
20. As of September 27, 2018, respondent had not provided the Department with any documentation regarding the corrective actions required by the 2013, 2016 and 2018 NOVs (*see* Zielinski Affidavit ¶ 21.)
21. As shown by the affidavit of service of Ellen Shupe Bell, respondent was served personally, on November 2, 2018 pursuant to section 306 of the Business Corporation Law, with the motion for order without hearing (*see* affidavit of service of Ellen Shupe Bell, sworn to November 2, 2018). Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the motion for order without hearing to respondent by first class mail on December 18, 2018 (*see* affidavit of Regina Seetahal, sworn to December 18, 2018).

DISCUSSION

Section 622.12 of 6 NYCRR provides for an order without hearing when upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party. “Summary judgment is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to judgment as a matter of law” (*Matter of Frank Perotta*, Partial Summary Order of the Commissioner, January 10, 1996, at 1, *adopting* ALJ Summary Report.)

CPLR 3212(b) provides that a motion for summary judgment shall be granted, “if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” Once the moving party has put forward a prima facie case, the burden shifts to the non-movant to produce sufficient evidence to establish a triable issue (*see Matter of Locaparra*, Commissioner’s Decision and Order, June 16, 2003).

Respondent has not submitted any response to the Department staff’s motion and therefore has failed to provide any material fact that would require a hearing. On an unopposed motion for order without hearing, the issue is whether Department staff has established its entitlement to summary judgment on the violations alleged in the motion (*see Matter of Edelstein*, Order of the Commissioner, July 18, 2014, at 2; *see also Matter of Hunt*, Decision and Order of the Commissioner, July 25, 2006, at 7 n2).

Pursuant to 6 NYCRR 622.12(a), staff has supported its motion for an order without hearing with the affidavit of Leszek Zielinski an environmental engineer who supervises and is responsible for the Region 2 PBS program. Mr. Zielinski reviewed the PBS facility inspection records maintained by the Department and described the violations of the PBS regulations.

Based on review of the affirmation, affidavit and the exhibits attached thereto, I conclude that Department staff’s proof presents a prima facie showing, in part, as discussed below.

First Cause of Action

Department staff alleges that respondent failed to renew the registrations for the Food Center Drive and the Oak Point Avenue facilities. Staff has made a prima facie showing that on the date of the May 7, 2013 inspection of the facility respondent failed to renew the registration for the Food Center Drive facility on or before June 18, 2012, the date the registration for that PBS facility expired, in violation of former 6 NYCRR 612.2(a)(2) (*see Finding of Fact No. 8B*). The record also reflects that the latest registration of the facility expired on June 18, 2017 and as of September 21, 2018 had not been renewed (*see Nam Affirmation*, Exhibit B). Staff, however, does not charge a violation of current 6 NYCRR 613-1.9(c) on the most recent failure to renew the registration for the Food Center Drive facility.

Department staff has made a prima facie showing that respondent failed to renew the registration for the Oak Point Avenue facility on or before February 27, 2017, the date the registration for that PBS facility expired, in violation of current 6 NYCRR 613-1.9(c) (*see* Finding of Fact No. 16A). As of September 21, 2018, the registration had not been renewed (*see* Nam Affirmation, Exhibit C).

Accordingly, Department staff's motion for an order without hearing on the two counts contained in the first cause of action is granted.

Second Cause of Action

Department staff alleges that as of May 4, 2016, respondent failed to maintain a current and accurate registration of the Food Center Drive facility in violation of 6 NYCRR 613-1.9(a). As a result of the May 4, 2016 inspection, staff has made prima facie showing that respondent's registration did not reflect the current tank external protection for UST #002 and current piping external protection (*see* Finding of Fact No. 12A).

Accordingly, Department staff's motion for an order without hearing on the second cause of action is granted.

Third Cause of Action

Department staff's third cause of action alleges respondent failed to display a current and valid PBS registration certificate at the Food Center Drive facility, in violation of 6 NYCRR 612.2(e). Staff has made a prima facie showing that during the May 7, 2013 inspection respondent displayed an expired registration and no current registration was on site (*see* Finding of Fact No. 8A).

Therefore, Department staff's motion for an order without hearing on the third cause of action is granted.

Fourth Cause of Action

In its fourth cause of action, Department staff alleges respondent failed to color code the fill port for UST #002 at the Food Center Drive Facility, in violation of former 6 NYCRR 613.3(b)(1). Staff has made a prima facie showing that respondent failed to color code the fill port for the UST #002 (*see* Finding of Fact No. 8C).

Accordingly, Department staff's motion for an order without hearing on the fourth cause of action is granted.

Fifth Cause of Action

For a fifth cause of action, Department staff alleges respondent failed to perform tightness testing on UST #002 at the Food Center Drive Facility in violation of former 6 NYCRR 613.5(a) (2013 inspection) and current 6 NYCRR 613-3.3(b)(1)(i) (2016 inspection). As a result

of the May 7, 2013 and May 4, 2016 inspections, staff has made a prima facie showing that respondent failed to perform the required tightness testing on UST #002 on two separate occasions (*see* Findings of Fact Nos. 8D and 12B).

Accordingly, Department staff's motion for an order without hearing on the two counts contained in the fifth cause of action is granted.

Sixth Cause of Action

Staff alleges respondent failed to perform annual line tightness testing on the pressurized piping associated with USTs #001 and #002 located at the Oak Point Avenue facility in violation of 6 NYCRR 613-2.3(b)(2)(i)(a)(2). Although the Zielanski Affidavit states respondent failed to perform tightness testing (*see* Zielanski Affidavit ¶ 17[v]), that statement is not supported by the inspection report or 2018 NOV (*see* Zielanski Affidavit Exhibits E and F). As discussed below, staff has made a prima facie showing that respondent failed to maintain and submit records regarding line tightness testing, but that does not lead to the factual or legal conclusion that the testing was not conducted.

The content of staff's inspection report and the 2018 NOV contradicts staff's conclusion (*see* Zielanski Affidavit Exhibits E [Inspection Report ##32-34] and F [2018 NOV at 2]). In noting a violation of current 6 NYCRR 613-2.3(e)(3) (the seventh cause of action herein), the 2018 NOV states, "The test report for the underground piping associated with [USTs #001 and #002] was not submitted. Submit the test report by March 30, 2018. If unable to submit a test report, conduct a line tightness test and submit the test report by March 30, 2018." The NOV does not recite a violation of 6 NYCRR 613-2.3(b)(2)(i)(a)(2), and the language quoted indicates the inspector did not know if an annual line tightness test had been performed.

As a result, Department staff's motion for an order without hearing on the sixth cause of action is denied.

Seventh Cause of Action

For a seventh cause of action, Department staff alleges respondent failed to:

1. Submit the results of the periodic tightness test for UST #001 located at the Food Center Drive facility, in violation of former 613.5(a)(4);
2. Maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with UST #001 located at the Oak Point Avenue facility, in violation of current 6 NYCRR 613-2.3(e)(1);
3. Maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with UST #002 located at the Oak Point Avenue facility, in violation of current 6 NYCRR 613-2.3(e)(1);
4. Submit the results of the annual functionality test for the automatic line tightness test on the pressurized piping associated with UST #001 located at the Oak Point Avenue facility, in violation of current 6 NYCRR 613-2.3(e)(3); and

5. Submit the results of the annual functionality test for the automatic line tightness test on the pressurized piping associated with UST #002 located at the Oak Point Avenue facility, in violation of current 6 NYCRR 613-2.3(e)(3).

Department staff has made a prima facie showing that respondent failed to submit the results of the periodic tightness test for UST #001 at the Food Center Drive facility (*see* Finding of Fact No. 8E); failed to maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with USTs #001 and #002 at the Oak Point Avenue facility (*see* Finding of Fact No. 16B); and failed to submit the results of the annual functionality test for the automatic line tightness test on the pressurized piping associated with USTs #001 and #002 at the Oak Point Avenue facility (*see* Finding of Fact No. 16D).

Accordingly, Department staff's motion for an order without hearing on the five counts contained in the seventh cause of action is granted.

Eighth Cause of Action

Department staff alleges respondent failed to maintain adequate records for the Class A, Class B and Class C operators at the Oak Point Avenue facility, in violation of current 6 NYCRR 613-2.5(f). Department staff proof demonstrates that during the inspection of the facility, records regarding the designation of the respective operators and their authorization or training were missing or inadequate (*see* Finding of Fact No. 16C). I conclude that staff has made a prima facie showing that respondent failed to maintain adequate records for the Class A, Class B and Class C operators at the Oak Point Avenue facility.

Department staff's motion for an order without hearing on the eighth cause of action is granted.

Liability

Staff has made a prima facie showing, as discussed above, of violations of former 6 NYCRR parts 612 and 613 and current 6 NYCRR subparts 613-1, 613-2 and 613-3. Pursuant to former 6 NYCRR 612.2(a) and current 6 NYCRR 613-1.9, the registration requirements are imposed on the owner of the facility. Former 6 NYCRR 613.3(b)(1) imposes the color coding requirements on the owner or operator of the facility. Department staff has made a prima facie showing that respondent is the owner of the PBS facilities (*see* Zielinski Affidavit ¶¶ 5 and 6; Nam Affirmation ¶¶ 3 and 4, Exhibits B and C), and therefore liable for the violations proven on the first, second, and fourth causes of action.

Former 6 NYCRR 612.2(e), however, imposes the obligation of displaying a registration on the operator and former 6 NYCRR 613.5(a)(4) imposes the obligation of testing a tank for tightness on the tank owner. Pursuant to current 6 NYCRR subparts 613-2 and 613-3, the tank and operating requirements of the subparts are imposed on the facility. Whenever the current regulations impose a requirement on a facility that requirement is imposed "on every operator and every tank system owner at the facility, unless expressly stated otherwise" (*see* 6 NYCRR 613-1.2[d]). Staff, however, has not pleaded or affirmatively demonstrated the identity of the

operator or tank system owner in support of staff's third, fifth, seventh and eighth causes of action alleging violations of former 6 NYCRR 612.2(e) and 613.5(a)(4) and current 6 NYCRR subparts 613-2 and 613-3. The expired registration for the Food Center Drive facility indicates that the tank owner is the same as the property owner and names the Class A and Class B operators of the facility (*see* Nam Affirmation, Exhibit B). The expired registration for the Oak Point Avenue facility identifies the Class B operator. Department staff, however, did not commence this proceeding against the operators. A.A. Truck Renting Corp. is the only named respondent who is identified by staff as the "registered owner" of the facilities (*see* Zielinski Affidavit ¶¶ 5 and 6; Nam Affirmation ¶¶ 3 and 4).

In a previous matter, I concluded "that when respondent failed to register the facility after transfer of ownership to it that a presumption arises that respondent facility owner is also the operator and tank system owner. It is, however, a rebuttable presumption" (*Matter of 2363 Southern Boulevard, LLC*, Summary Report at 6, *adopted by* Order of the Commissioner, September 11, 2017). I also noted in that matter that respondent, as a facility owner, is in a position to correct the violations, and respondent failed to appear and failed to rebut the presumption.

In this matter, the registration for the Food Center Drive facility expired on June 18, 2017, and as noted above, the registration certificate identified respondent as the facility owner and tank owner. The registration for the Oak Point Avenue facility expired on February 27, 2017. It is the facility owner's responsibility to maintain a current and accurate registration for a facility including the identification of the tank owner and operators (*see e.g.* current 6 NYCRR 613-1.9[a]). When the facility owner fails to renew a registration, staff may not be able to determine whether there are other responsible parties besides the facility owner.

I conclude that when respondent failed to renew the registration of the facilities, a presumption arises that the facility owner is also the tank system owner. Respondent has failed to appear in this proceeding and failed to rebut the presumption. Accordingly, I conclude that Department staff has made a *prima facie* showing that respondent is liable for the violations proven in staff's third, fifth, seventh and eighth causes of action.

RULING

Based on the foregoing, my ruling on Department staff's motion is as follows:

1. Department staff's motion for order without hearing in lieu of complaint dated September 27, 2018 is granted on the issue of liability against respondent A.A. Truck Renting Corp. on the following violations:
 - A. i. Former 6 NYCRR 612.2(a)(2) for failing to renew the registration of the Food Center Drive facility (first cause of action);
 - ii. Current 6 NYCRR 613-1.9(c) for failing to renew the registration of the Oak Point Avenue facility (first cause of action);

- B. Current 6 NYCRR 613-1.9(a) for failing to maintain a current and accurate PBS registration for the Food Center Drive facility (second cause of action);
 - C. Former 6 NYCRR 612.2(e) for failing to display a current and valid PBS registration at the Food Center Drive facility (third cause of action);
 - D. Former 6 NYCRR 613.3(b)(1) for failing to properly color code the fill port associated with underground storage tank (UST) #002 at the Food Center Drive facility (fourth cause of action);
 - E.
 - i. Former 6 NYCRR 613.5(a) for failing to test UST #002 for tightness within five years from the date of the previous test at the Food Center Drive facility (fifth cause of action);
 - ii. Current 6 NYCRR 613-3.3(b)(1)(i) for failing to test UST #002 for tightness at yearly intervals at the Food Center Drive facility (fifth cause of action);
 - F.
 - i. Former 6 NYCRR 613.5(a)(4) for failing to submit the results of the periodic tightness test of UST #001 at the Food Center Drive facility (seventh cause of action);
 - ii. Current 6 NYCRR 613-2.3(e)(1) for failing to maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with UST #001 at the Oak Point Avenue facility (seventh cause of action);
 - iii. Current 6 NYCRR 613-2.3(e)(1) for failing to maintain the results of the annual functionality test for the automatic line leak detector on the pressurized piping associated with UST #002 at the Oak Point Avenue facility (seventh cause of action);
 - iv. Current 6 NYCRR 613-2.3(e)(3) for failing to submit the results of the annual line tightness test on the pressurized piping associated with UST #001 at the Oak Point Avenue facility (seventh cause of action);
 - v. Current 6 NYCRR 613-2.3(e)(3) for failing to submit the results of the annual line tightness test on the pressurized piping associated with UST #002 at the Oak Point Avenue facility (seventh cause of action); and
 - G. Current 6 NYCRR 613-2.5(f) for failing to maintain adequate records for the Class A, Class B, and Class C Operators at the Oak Point Avenue facility (eighth cause of action).
2. Department staff's motion for order without hearing in lieu of complaint on Department staff's sixth cause of action is denied.
 3. I reserve on ruling on the civil penalty and relief requested in Department staff's motion for order without hearing in lieu of complaint until a hearing is held on the remaining cause of action.

Accordingly, Department staff's motion for order without hearing in lieu of complaint is granted in part, as detailed herein. I will schedule a hearing on the sixth cause of action and the requested civil penalties and relief. In the event Department staff elects not to pursue the remaining cause of action, a summary report will be issued with respect to the requested penalties and relief.

_____/s/_____
Michael S. Caruso
Administrative Law Judge

Dated: April 5, 2019
Albany, New York

APPENDIX A

Matter of A.A. Truck Renting Corp.

DEC File Nos. R2-20130521-196, R2-20160927-328, and R2-20180410-105
Motion for Order Without Hearing

1. Notice of Motion for an Order Without a Hearing, dated September 27, 2018
2. Affirmation of Grace H. Nam in Support of Motion for Order Without a Hearing, dated September 27, 2018, attaching the following exhibits:
 - A. NYS Department of State Entity Information Sheets regarding A.A. Truck Renting Corp., reflecting information through September 20, 2018
 - B. PBS Facility Information Report, PBS #2-270768 printed September 21, 2018 and PBS Registration Certificate issued to AA Truck Renting Corp on May 2, 2013, expired June 18, 2017 for AA Truck Renting Corp, 355 Food Center Drive, Bronx, NY
 - C. PBS Facility Information Report, PBS #2-611778 printed September 21, 2018 and PBS Registration Certificate issued to AA Truck Renting Corp on March 15, 2012, expired February 27, 2017 for AA Truck Renting Corp, 500 Oak Point Avenue, Bronx, NY
 - D. Matter of A.A. Truck Renting Corp., Order on Consent No. R2-20061130-500, January 16, 2007
 - E. Matter of A.A. Truck Renting Corp., Order on Consent No. R2-20080604-284, June 18, 2008
 - F. Matter of A.A. Truck Renting Corp., Order on Consent No. R2-20111216-833, January 19, 2012
 - G. Matter of A.A. Truck Renting Corp., Order on Consent No. R2-20120203-70, March 19, 2012
 - H. Matter of A.A. Truck Renting Corp., Order on Consent No. R2-20150320-182, December 22, 2015
3. Affidavit of Leszek Zielinski, P.E. in Support of Motion for Order Without a Hearing, sworn to September 27, 2018, attaching the following exhibits:
 - A. PBS Facility Information Report, PBS #2-270768 printed March 28, 2013 for AA Truck Renting Corp, 355 Food Center Drive, Bronx, NY; Notice of Violation, dated June 4, 2013; NYSDEC PBS Regulations Inspection Report, dated May 7, 2013 with ten (10) unnumbered photographs
 - B. Notice of Violation, dated June 4, 2013

- C. PBS Facility Information Report, PBS #2-270768 printed March 4, 2016 for AA Truck Renting Corp, 355 Food Center Drive, Bronx, NY; NYSDEC PBS Inspection Form, dated May 4, 2016; Notice of Violation, dated June 2, 2016 with fourteen (14) unnumbered photographs
 - D. Notice of Violation, dated June 2, 2016;
 - E. Notice of Violation, dated April 6, 2018; PBS Facility Information Report, PBS #2-611778 printed November 30, 2017 for AA Truck Renting Corp, 500 Oak Point Avenue, Bronx, NY; NYSDEC PBS Inspection Form, dated January 18, 2018 with three (3) unnumbered photographs
 - F. Notice of Violation, dated June 2, 2016
- 4. Affidavit of Service Pursuant to Business Corp. Law ¶ 306 of Ellen Shupe Bell, sworn to November 2, 2018
 - 5. Affidavit of Service Pursuant to CPLR 3215(g) of Regina Seethahal, sworn to December 18, 2018