

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

In the Matter of the Alleged Violation of Article 17 of the Environmental Conservation Law (ECL) of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 613,

ORDER

DEC File No.
R9-20200601-35

-by-

LUCIAN BUCHANAN,

Respondent.

This administrative enforcement proceeding concerns allegations by staff of the New York State Department of Environmental Conservation (Department) that Lucian Buchanan (respondent) violated New York State's petroleum bulk storage (PBS) regulations at its facility located at 846 East Second Street, Jamestown, New York, Chautauqua County (facility). Specifically, staff alleges that respondent violated: 6 NYCRR 613-1.9(c) by failing to renew respondent's petroleum bulk storage (PBS) registration with the Department after the registration expired on March 8, 2018; and 6 NYCRR 613-2.6(a)(3), by failing to permanently close three (3) 10,000-gallon underground storage tanks (USTs) at the facility that have been out-of-service for more than 12 months.

Administrative Law Judge (ALJ) Lara Q. Olivieri of the Department's Office of Hearings and Mediation Services was assigned to this matter and prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter (*see* Default Summary Report at 4 [Finding of Fact No. 16]; *see* Motion for Default Judgment, dated March 2, 2021, ¶¶ 2, 20). Department staff subsequently submitted a motion for default judgment under cover letter dated March 2, 2021 (*see* Default Summary Report at 1).

As a consequence of respondent's failure to answer in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (*see* Default Summary Report at 7). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The

pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent failed to renew the facility's PBS registration with the Department after the registration expired on March 8, 2018 and failed to permanently close the three USTs at the facility, which have been out-of-service for more than 12 months (*see* Motion for Default, Exhibit A [Affidavit of Patrick Diez, sworn to February 26, 2021] [Diez Affidavit], ¶¶ 21, 25). Accordingly, respondent is in violation of 6 NYCRR 613-1.9(c) and 6 NYCRR 613-2.6(a)(3).¹

The Department's PBS regulations have been designed to protect the public health and environment from adverse impacts arising from the release of petroleum products. Department staff correctly points out that the requirement to register PBS facilities is one of the "cornerstones" of the PBS regulatory scheme (Motion for Default Judgment, Exhibit A, Diez Affidavit, ¶ 40). Proper registration assists in the oversight of other requirements for a PBS facility (e.g., leak detection and tank closure), with the goal of protecting the environment and public health (*see id.*).

Department staff seeks a penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240). ECL 71-1929, which applies to the regulatory violations at issue in this proceeding, provides for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. In support of its penalty request, Department staff considered various applicable Department enforcement and penalty policies, respondent's failure to cooperate and respondent's economic benefit of noncompliance (*see* Motion for Default Judgment, Exhibit A, Diez Affidavit, ¶¶ 27-37). The civil penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240) as requested by Department staff, is authorized and appropriate for the violations established on this motion.

As discussed in the default summary report, respondent Buchanan sold the facility on November 24, 2020. The status of the USTs is uncertain based on the record before me. Whether respondent undertook any corrective actions prior to the sale and the extent of the new owner's obligations with respect to the USTs are unknown. Accordingly, I leave it to staff's discretion whether to pursue the imposition of corrective measures in the future.

With respect to facility registration, I direct that respondent submit a complete petroleum bulk storage application for the facility, plus applicable and past due registration fees, to the Department within thirty (30) days of the service of this order upon respondent. Respondent is directed to update the facility registration as of November 24, 2020, the date that respondent transferred the facility.

¹ I concur with the correction of the citation in the first cause of action in staff's notice of hearing and complaint (correcting 6 NYCRR 613-1.9[d]) to 6 NYCRR 613-1.9[c] as discussed in the Default Summary Report (*see* Default Summary Report at 4-5).

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

- I. Department staff's motion for default judgement pursuant to 6 NYCRR 622.15 is granted. By failing to answer the complaint, respondent Lucian Buchanan waived his right to be heard at hearing.
- II. The amendment of the complaint to charge respondent Lucian Buchanan in the first cause of action with a violation of 6 NYCRR 613-1.9(c) is confirmed.
- III. Based on the pleadings and papers submitted with and in support of Department staff's motion, respondent Lucian Buchanan is adjudged to have violated:
 - A. 6 NYCRR 613-1.9(c), by failing to renew the PBS registration for the facility after the registration expired on March 8, 2018; and
 - B. 6 NYCRR 613-2.6(a)(3), by failing to permanently close the three (3) underground storage tanks at the facility that have been out-of-service for more than 12 months.
- IV. Within thirty (30) days of service of this order upon respondent Lucian Buchanan, respondent shall submit to the Department a complete petroleum bulk storage application for the facility, plus applicable and past due registration fees. This application shall be updated as of the date of the transfer of the facility on November 24, 2020.
- V. Within thirty (30) days of service of this order upon respondent Lucian Buchanan, respondent shall pay a civil penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240) by certified check, cashier's check or money order made payable to the "New York State Department of Environmental Conservation."
- VI. Respondent Lucian Buchanan shall submit the penalty payment and all other submissions to the following:

Teresa J. Mucha, Esq.
Associate Attorney
NYSDEC Region 9
270 Michigan Avenue
Buffalo, New York 14203-2915.
- VII. Any questions or other correspondence regarding this order shall also be addressed to Teresa J. Mucha, Esq. at the address referenced in paragraph VI of this order.

VIII. The provisions, terms and conditions of this order shall bind respondent Lucian Buchanan and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: /s/
Basil Seggos
Commissioner

Dated: June 17, 2021
Albany, New York

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

In the Matter of the Alleged Violation of Article 17 of the Environmental Conservation Law (ECL) of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 613,

**DEFAULT SUMMARY
REPORT**

-by-

DEC Case No.
R9-20200601-35

LUCIAN BUCHANAN,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served Lucian Buchanan (respondent) with a notice of hearing and complaint (NOHC) dated August 11, 2020, alleging respondent failed to renew a petroleum bulk storage (PBS) registration and failed to permanently close three (3) underground storage tanks (USTs) that had been out-of-service for more than twelve months, in violation of ECL article 17 and 6 NYCRR part 613.

Respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint (*see* Motion for Default Judgment, Exhibit F). A pre-hearing conference was scheduled for October 27, 2020 by Administrative Law Judge (ALJ) Molly T. McBride (*see* Motion for Default Judgment, Exhibit I). Respondent's representative thereafter participated in several conference calls in November 2020 but respondent ceased all communications with Department staff after November 24, 2020 (*see* Motion for Default Judgment ¶¶ 22-23). In addition, ALJ McBride scheduled a conference call for January 5, 2021 and respondent failed to appear (*see* Motion for Default Judgment ¶¶ 24-25).

By cover letter dated March 2, 2021, staff submitted a written motion for a default judgment with supporting papers (*see* Appendix A, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by first class mail on March 2, 2021 (*see* Motion for Default Judgment, Exhibit J). Department staff requested a default judgment against respondent finding respondent in violation of: (i) 6 NYCRR 613-1.9(c) for failing to renew the PBS registration every five years from the date of the last

valid registration certificate; and (ii) 6 NYCRR 613-2.6(a)(3) for failing to permanently close three (3) USTs that have been out-of-service for more than twelve months.¹

Department staff requests an order that: (i) finds respondent in violation of the cited regulations; (ii) directs respondent to pay a civil penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240); and (iii) directs respondent to perform the following corrective actions within thirty days of the effective date of the order: (a) submit a completed PBS registration application, with fee payment, to the Department to renew the registration for the facility; (b) submit a work plan, for Department review and approval, to permanently close the three (3) USTs at the facility in accordance with 6 NYCRR 613-2.6 (b) through (e); and (c) permanently close the three (3) USTs at the facility within 60 days of Department approval of the work plan.

Applicable Regulatory Provisions

Section 613-1.9(c) of 6 NYCRR states:

“(c) Renewal. Registration must be renewed every five years from the date of the last valid registration certificate until the department receives written notice and documentation from the facility owner that the facility has been permanently closed in accordance with section 613-2.6(b), 613-3.5(b), or 613-4.5(b) of this Part, or that ownership of the facility has been transferred in accordance with subdivision (d) of this section.”

Section 613-2.6(a)(3) of 6 NYCRR states:

“(a) Out-of-service UST systems.

.....

“(3) When a UST system is out-of-service for more than 12 months, the facility must permanently close the UST system in accordance with subdivisions (b) through (e) of this section.”

Findings of Fact

The following facts are found based upon the pleadings and papers submitted with and in support of staff’s motion for a default judgment:

1. Respondent Lucian Buchanan owned a PBS facility located at 846 East Second Street,

¹ Part 622 of 6 NYCRR, Uniform Enforcement Hearing Procedures, was repealed and replaced effective September 16, 2020. Department staff commenced this proceeding before the effective date of the current part 622 regulations. Accordingly, jurisdictional service is reviewed and considered pursuant to former part 622. Staff’s default motion papers were submitted after the effective date of the current part 622 and will be reviewed and considered pursuant to the current part 622 regulations.

Jamestown, New York, Chautauqua County (facility) (*see* Motion for Default Judgment, Exhibit D).

2. The facility is registered in the Department's PBS database as PBS #9-079243 and consists of three (3) USTs with a total capacity of 30,000 gallons (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 9; Diez Exhibit A).
3. The PBS registration for the facility expired on March 8, 2018 (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 11).
4. Patrick Diez is employed as an Environmental Program Specialist T2 in the Department's Division of Environmental Remediation, Petroleum Bulk Storage unit, in the Department's Region 9 office located in Buffalo, New York (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 2).
5. As part of his duties, Mr. Diez is familiar with and administers provisions of ECL article 17, title 10, and 6 NYCRR part 613 pertaining to the regulation of PBS tanks, and assists the regulated community with PBS compliance, conducts inspections of PBS facilities and assists in enforcing violations of the PBS laws and regulations including development of civil penalties (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶¶ 3-4).
6. On March 31, 2017, and November 12, 2019, Mr. Diez inspected the facility and observed several PBS violations (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 13; Diez Exhibit C).
7. As part of his inspections, Mr. Diez reviewed the Department's PBS file for the facility and discovered that there was no documentation regarding the closure of the three (3) USTs (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 14).
8. Respondent's PBS USTs were out-of-service for more than twelve months, since approximately March 30, 2017 (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶¶ 24-25).
9. Respondent failed to renew the PBS registration for the facility after the registration expired on March 8, 2018 (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 21).
10. Mr. Diez mailed a notice of violation (NOV) dated April 3, 2017, to respondent identifying the violations he observed during the March 30, 2017, inspection. However, this NOV was returned to the Department by the United States Postal Service and noted to be undeliverable to respondent. (*See* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶¶ 15-16; Diez Exhibit D.)
11. A second NOV dated August 1, 2018, was sent to respondent identifying the violations observed by Mr. Diez on March 30, 2017, and the corrective actions required to address

the violations. The NOV stated that a schedule for the permanent closure of the three (3) USTs must be submitted to the Department by September 3, 2018. (*See* Motion for Default Judgment, Exhibit A - Diez Affidavit ¶ 17; Diez Exhibit E.)

12. Mr. Diez mailed a further NOV dated December 19, 2019, to respondent identifying the violations he observed during the November 12, 2019, inspection and the corrective actions required to address the violations. The NOV stated that a schedule for the permanent closure of the three (3) USTs and a completed PBS application and fee to renew the facility's registration must be submitted to the Department by January 21, 2020. (*See* Motion for Default Judgment, Exhibit A - Diez Affidavit ¶¶ 18-19; Diez Exhibit F.)
13. Respondent sold the facility on or about November 24, 2020 to a new owner who is not a party to this action (*see* Motion for Default Judgment, Exhibit E).
14. Respondent has not registered the facility or permanently closed the out-of-service PBS USTs (*see* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶¶ 19, 21, 25-26).
15. As shown by affidavits of Pamela Frasier and Susan L. Reynolds, respondent was served by certified mail on August 12, 2020, which was received by respondent on August 15, 2020, with a notice of hearing and complaint dated August 11, 2020, alleging violations of 6 NYCRR 613-1.9(c) and 613-2.6(a)(3), together with a cover letter, for failure to renew its PBS facility registration and for failure to remove or permanently close the PBS USTs at the facility located at 846 East Second Street, Jamestown, New York, Chautauqua County (*see* Motion for Default Judgment, Exhibits G and H).
16. Respondent failed to file an answer to the complaint, as directed in the notice of hearing (*see* Motion for Default Judgment, dated March 2, 2021, ¶ 2).

Discussion

Before discussing Department staff's case, a correction must be made to a citation in Department staff's papers. Department staff's notice of hearing and complaint incorrectly cites to 6 NYCRR 613-1.9(d) instead of 6 NYCRR 613-1.9(c) in the first cause of action. The incorrect citation also appears in Department staff's motion for default judgment and the Diez affidavit (*see* Motion for Default Judgment ¶ 27, Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 21).

Where typographical errors in pleadings are involved, the Office of Hearings and Mediation Services has applied CPLR 2001 standards (*see Matter of 428 East 157th St. Hous. Dev. Fund Corp.*, Order of the Commissioner, Nov. 27, 2013, at 1-2; *see also id.*, ALJ Hearing Report at 5-6). Under CPLR 2001, a tribunal "may permit a mistake, omission, defect or irregularity . . . to be corrected, upon terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded."

CPLR 2001 authorizes the court to disregard or "correct, sua sponte, any defect, provided any substantial right of the party is not prejudiced." (*See Albia v Hillcrest Gen. Hosp.*, 124 AD2d 499, 500 [1st Dept 1986].) Department staff's use of 6 NYCRR 613-1.9(d) instead of 6 NYCRR 613-1.9(c) is not fatal to staff's case. The correct language of the regulation was used, and only the incorrect subsection was cited in Department staff's papers. Further, the December 19, 2019, NOV sent to respondent set forth the documented violations and the correct citation of 6 NYCRR 613-1.9(c). Several settlement conferences with respondent or respondent's representative were also held in which the violations were discussed with ALJ McBride and Department staff. Respondent was fairly apprised that Department staff intended to seek judgment against respondent related to respondent's alleged violation of 6 NYCRR 613-1.9(c) resulting from the failure to renew the registration every five years from the date of the last valid registration certificate. I also note that 6 NYCRR 613-1.9(d) relates to initial registration or transfer of ownership, which is not applicable to this matter. Therefore, in the absence of prejudice to respondent, I deem the notice of hearing and complaint to be amended to charge respondent in the first cause of action with a violation of 6 NYCRR 613-1.9(c).

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see* 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, "and failure to attend constitutes a default and a waiver of the opportunity for a hearing" (6 NYCRR 622.8[c]; *see also* 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain:

- "(1) Proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
- "(2) Proof of respondent's failure to appear or failure to file a timely answer;
- "(3) Consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
- "(4) A concise statement of the relief requested;
- "(5) A statement of authority and support for any penalty or relief requested; and
- "(6) Proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable."

(6 NYCRR 622.15[b][1] - [6] [effective September 16, 2020]).

As the Commissioner has held, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them" (*Matter of Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim[s]" alleged in the complaint (*Matter of Queen City Recycle Ctr., Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3). Staff is required to support their motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*see Matter of Samber*

Holding Corp., Order of the Commissioner, March 12, 2018, at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent in August 2020 by certified mail (*see* Motion for Default Judgment, Exhibit G, affidavit of service of Pamela Frasier, sworn to February 23, 2021); (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint; (iii) Department staff's motion includes a concise statement of the relief requested; (iv) staff's motion includes a statement of authority and support for the penalty and relief requested; and (v) Department staff provided proof of service of the motion papers on respondent (*see* Motion for Default Judgment, Exhibit J, affidavit of service of Pamela Frasier, sworn to March 2, 2021). Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to submit an application to renew the facility's registration with the Department, in violation of 6 NYCRR 613-1.9(c); and failed to permanently close the USTs at the facility that have been out of service for more than twelve (12) months, in violation of 6 NYCRR 613-2.6(a)(3).

Department staff seeks a civil penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240). Staff's submissions on the motion for a default judgment elaborate on the requested penalty, discussing the Department's Civil Penalty Policy (DEE-1, June 20, 1990) and DEE-22: Petroleum Bulk Storage Inspection Enforcement Policy-Penalty Schedule (*see* Motion for Default Judgment, Exhibit A, Diez Affidavit, ¶¶ 27-37).

ECL 71-1929 provides for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. The statutory maximum penalty for the two violations, as computed by staff, exceeds seventy-nine million dollars. Department staff discusses the costs avoided by respondent's noncompliance and the average costs to renew the registration and close the PBS tanks.

Department staff further points out that staff attempted to reach a resolution with respondent on several occasions. Respondent was aware of the PBS violations for more than three (3) years and subsequently sold the facility to a new owner without correcting the violations. (*See* Motion for Default Judgment, Exhibit A - Diez Affidavit, ¶ 38.)

I find that staff's request for a civil penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240) is consistent with the Department's penalty policy as well as applicable provisions of ECL article 71.

Department staff in its complaint further requested that respondent be directed to perform the following corrective measures to address the violations:

- i. Submit a completed PBS registration application, with fee payment, to renew the registration for the facility within thirty (30) days of the effective date of the order;
- ii. Submit a work plan for Department review and approval, for the permanent closure of the USTs at the facility, in accordance with 6 NYCRR 613-2.6(b) through (e), within thirty (30) days of the effective date of the order; and
- iii. Permanently close the three (3) USTs within 60 days of Department approval of the work plan.

The requested corrective measures were authorized and would have been appropriate to be imposed upon this respondent. As previously noted, however, respondent sold the facility to a new owner without correcting the PBS violations. It is unclear on this record whether the new owner has or is in the process of addressing the three tanks or whether respondent has any rights of access to the facility subsequent to the sale to undertake the corrective measures. I note also that Department staff did not include the above-referenced corrective measures in its request for relief in the default judgment motion (*see* Motion for Default Judgment, at unnumbered page 7 [Wherefore clause]). Accordingly, I am not recommending imposing any of the proposed corrective measures in the context of this proceeding, and leave to staff's determination whether to pursue the imposition of such measures in the future.

Conclusions of Law

1. Respondent violated 6 NYCRR 613-1.9(c) by failing to renew the facility's PBS registration every five years from the date of the last valid registration certificate, as the facility's PBS registration expired on March 8, 2018 and respondent failed to submit a PBS application to renew the facility's registration; and
2. Respondent violated 6 NYCRR 613-2.6(a)(3) by failing to permanently close three (3) USTs that have been out-of-service for more than twelve months.

Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. Affirming the amendment of the complaint to charge respondent Lucian Buchanan in the first cause of action with a violation of 6 NYCRR 613-1.9(c);
2. Granting Department staff's motion for default judgment, holding respondent Lucian Buchanan in default pursuant to the provisions of 6 NYCRR 622.15;
3. Holding that respondent Lucian Buchanan:
 - (i) violated 6 NYCRR 613-1.9(c) for failing to renew the facility's PBS registration every five years from the date of the last valid registration certificate; and

- (ii) violated 6 NYCRR 613-2.6(a)(3) by failing to close the USTs that have been out-of-service for more than twelve months.
- 4. Directing respondent Lucian Buchanan to submit a completed PBS registration application, plus applicable and past due registration fees, within thirty (30) days of service of the Commissioner's order to update the facility's registration current as of the date of respondent's sale of the facility on November 24, 2020;
- 5. Directing respondent Lucian Buchanan to pay a civil penalty in the amount of eighteen thousand two hundred and forty dollars (\$18,240) within thirty (30) days of service of the Commissioner's order; and
- 6. Directing such other and further relief as the Commissioner may deem just and appropriate.

/s/
Lara Q. Olivieri
Administrative Law Judge

Dated: Albany, New York
June 15, 2021

APPENDIX A

Matter of Lucian Buchanan
DEC File No. R9-20200601-35
Motion for Default Judgment

1. Cover letter addressed to Administrative Law Judge Molly T. McBride, of the Department's Office of Hearings and Mediation Services dated March 2, 2021, attaching staff's motion papers dated March 2, 2021 addressed to respondent Lucian Buchanan.
2. Notice of Motion and Motion for Default Judgment, dated March 2, 2021, and Affirmation in Support of Motion for Default Judgment dated March 2, 2021 by Teresa J. Mucha, Esq. attaching the following exhibits:
 - A. Affidavit of Patrick Diez, dated February 26, 2021, attaching the following exhibits:
 - A) Petroleum Bulk Storage Program's Facility Information Report for facility information at 846 East Second Street, Jamestown, New York, PBS# 9-079243.
 - B) Petroleum Bulk Storage Application, PBS# 9-079243.
 - C) Inspection Forms dated March 31, 2017 and November 12, 2019.
 - D) Notice of Violation dated April 3, 2017.
 - E) Notice of Violation dated August 1, 2018.
 - F) Notice of Violation dated December 19, 2019.
 - B. Chautauqua County Parcel Report for parcel 370.20-6-5, 846 East Second Street, Jamestown, New York.
 - C. Letter dated November 6, 2018 from Chautauqua County Department of Law.
 - D. Deed dated July 6, 2018, filed with the Chautauqua County Clerk and recording page dated July 10, 2018.
 - E. Deed dated November 24, 2020, filed with the Chautauqua County Clerk and recording page dated November 25, 2020.
 - F. Cover letter addressed to respondent Lucian Buchanan dated August 11, 2020, attaching Department staff's Notice of Hearing and Complaint dated August 11, 2020.
 - G. Affidavit of Service of Pamela Frasier dated February 23, 2021, attaching the following exhibits:

- A) USPS Tracking information sheet, tracking number 70200640000064342721.
 - B) USPS certified mailing green card receipts.
- H. Affidavit of Susan L. Reynolds dated February 23, 2021.
- I. Email and Webex meeting information from Administrative Law Judge Molly T. McBride, of the Department's Office of Hearings and Mediation Services, dated October 27, 2020.
- J. Affidavit of Service of Pamela Frasier dated March 2, 2021.