

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

In the Matter of the Alleged Violations
of Article 17 of the Environmental
Conservation Law and Parts 612, 613 and
614 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York,

ORDER

DEC Case No.
R4-2008-0428-58

- by -

**HARPAL SINGH KINGRA
d/b/a SINGH AUTO SERVICE,**

Respondent.

Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Harpal Singh Kingra d/b/a Singh Auto Service ("respondent"), by service of a notice of hearing and complaint dated September 22, 2008. In accordance with 6 NYCRR 622.3(a)(3), the complaint, together with a notice of hearing, was served upon respondent by certified mail on September 23, 2008.

Respondent owns and/or operates a petroleum bulk storage ("PBS") facility (#4-134791) at 2470 Albany Street, Schenectady, New York (the "facility"). Department staff's complaint alleged that, based upon a November 14, 2007 inspection of the facility, respondent:

- was in violation of 6 NYCRR 612.2(a)(2), by failing to properly list his underground storage tank on the facility's PBS registration and by allowing the facility's PBS registration to expire;

- was in violation of 6 NYCRR 613.3(d), by failing to maintain the spill prevention equipment at the facility in good working order in that he allowed water to collect in the catch basins for two of the three fill port sumps; and

- was in violation of 6 NYCRR 614.3(a), by failing to properly label the underground storage tank at its fill ports.

Respondent failed to file an answer to the complaint. Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint expired on or about October 13, 2008, and has not been extended by Department staff.

Department staff filed a motion for default judgment, dated December 4, 2008, with the Department's Office of Hearings and Mediation Services. The matter was initially assigned to Administrative Law Judge ("ALJ") Daniel P. O'Connell and then to ALJ P. Nicholas Garlick, who prepared the attached default summary report. I adopt the ALJ's report as my decision in this matter, subject to the following comments.

The affidavit of Dan Lightsey, P.E. dated December 4, 2008 details factors that support the proposed penalty, including respondent's history of noncompliance. In addition, Department staff in its papers requested that respondent be directed to submit a Petroleum Bulk Storage Information Correction form to properly register the facility. Based upon the record, I conclude that the proposed civil penalty and the request for the submission of a Petroleum Bulk Storage Information Correction form are appropriate. The form is to be submitted to Department staff within fifteen (15) days of the service of this order upon respondent.

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

I. Pursuant to 6 NYCRR 622.15, Department staff's motion for a default judgment is granted.

II. Respondent Harpal Singh Kingra d/b/a Singh Auto Service is adjudged to be in default and to have waived the right to a hearing in this enforcement proceeding. Accordingly, the allegations against respondent, as contained in the complaint, are deemed to have been admitted by respondent.

III. Respondent Harpal Singh Kingra d/b/a Singh Auto Service is adjudged to have violated 6 NYCRR 612.2(a)(2), 613.3(d), and 614.3(a) at his petroleum bulk storage facility located at 2470 Albany Street, Schenectady, New York.

IV. Respondent Harpal Singh Kingra d/b/a Singh Auto Service is hereby assessed a civil penalty in the amount of ten thousand dollars (\$10,000). The civil penalty is due and payable within thirty (30) days after service of this order upon respondent.

V. Payment of the penalty set forth in Paragraph IV shall be made by cashier's check, certified check, or money order drawn to the order of the "New York State Department of Environmental Conservation" and mailed or hand-delivered to Jill Phillips, Esq., Assistant Regional Attorney, NYSDEC - Region 4, 1130 North Westcott Road, Schenectady, New York 12306-2014.

VI. Respondent Harpal Singh Kingra d/b/a Singh Auto Service

is directed to submit a Petroleum Bulk Storage Information Correction form (the "correction form") to Department staff to properly register the facility. The correction form is to be submitted no later than fifteen (15) days of the service of this order upon respondent. Respondent shall:

- indicate on the correction form that the underground storage tank at the facility is a compartmentalized tank, and designate each compartment on the form with an alphabetical suffix (for example, the first compartment would be designated with an "A", the second compartment with a "B", etc.); and

- review for completeness columns 17, 18, 19 and 20 on the correction form, including but not limited to the information relating to piping leak detection. Respondent must identify all forms of piping leak detection and provide any other supplemental or revised information on the form as may be necessary to correct and update the facility's petroleum bulk storage registration.

The correction form is to be submitted to Jill Phillips, Esq., Assistant Regional Attorney, NYSDEC - Region 4, 1130 North Westcott Road, Schenectady, New York 12306-2014.

VII. All communications from respondent to the Department concerning this order shall be made to Jill Phillips, Esq., Assistant Regional Attorney, NYSDEC - Region 4, 1130 North Westcott Road, Schenectady, New York 12306-2014.

VIII. The provisions, terms, and conditions of this order shall bind respondent Harpal Singh Kingra d/b/a Singh Auto Service, and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____ /s/
Alexander B. Grannis
Commissioner

Dated: May 19, 2009
Albany, New York

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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of Article 17 of the Environmental
Conservation Law and Parts 612, 613 and
614 of Title 6 of the Official
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**DEFAULT SUMMARY
REPORT**

DEC Case No.
R4-2008-0428-58

- by -

**HARPAL SINGH KINGRA
d/b/a SINGH AUTO SERVICE,**

Respondent.

Proceedings

On September 22, 2008, by certified mail, staff of the New York State Department of Environmental Conservation's (DEC staff) Region 4 office served the respondent Harpal Singh Kingra d/b/a Singh Auto Service with a notice of hearing and complaint. In the complaint, staff alleged violations of Article 17 of the Environmental Conservation Law (ECL), and its implementing regulations, specifically Parts 612, 613 and 614 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) related to respondent's Petroleum Bulk Storage (PBS) Facility (#4-134791) located at 2470 Albany Street, Schenectady, New York. The respondent received the notice of hearing and complaint on September 23, 2008. Pursuant to 6 NYCRR 622.4(a), the respondent had 20 days from receipt of the complaint to serve an answer, that date was October 13, 2008 and no answer has been received. Pursuant to 6 NYCRR 622.15, by papers dated December 4, 2008, DEC staff mailed the Department's Office of Hearings and Mediation Services (OHMS) a notice of motion for default judgment. Chief Administrative Law Judge James T. McClymonds assigned this matter to Administrative Law Judge ("ALJ") Daniel P. O'Connell and then to me.

Discussion

According to the Department's regulations, a respondent's failure to file a timely answer to a complaint constitutes a default and waiver of respondent's right to a hearing. 6 NYCRR 622.12(b), 622.15(a). In these circumstances, Department staff may move for a default judgment, the motion to contain:

(1) proof of service of the notice of hearing and complaint or motion for order without hearing;

(2) proof of the respondent's failure to appear or to file a timely answer; and

(3) a proposed order.

6 NYCRR 622.15(b).

Attached to the affirmation of Jill Phillips, Assistant Regional Attorney, dated December 4, 2008 ("Phillips Affirmation") are DEC Staff member Kathleen Fabrey's affidavit of service of the notice of hearing and complaint dated September 22, 2008, as well as copies of the certified mail receipts and United States Postal Service "track & confirm" statement indicating that the respondent received the pleadings on September 23, 2008. See, Exhibit A, Attachment 1. Also attached to DEC Staff's papers is the affidavit of DEC Staff member Dan Lightsey, P.E. dated December 4, 2008 ("Lightsey Affidavit") related to the civil penalty amount sought. In her affirmation, Ms. Phillips states that staff has not received an answer to the complaint, and the time to file one has passed. See, Phillips Affirmation, ¶ 5; 6 NYCRR 622.4(a).

Staff has also submitted a copy of the notice of hearing and complaint (Exhibit B) and a proposed order (Exhibit C) attached to Ms. Phillips's affirmation.

Based upon the above submissions, DEC staff has met the requirements for a default judgment.

Penalty

In his affidavit, Mr. Lightsey requests a civil penalty of \$10,000 in satisfaction of the violations alleged in the complaint and in the motion papers. The relevant provision of law, ECL 71-1929, provides for a maximum penalty for violations of titles 1 through 11 and title 19 of article 17 of the ECL or regulations promulgated thereunder, including 6 NYCRR 612, 613 and 614, of thirty seven thousand five hundred dollars per day for each such violation. DEC staff's request for a penalty of \$10,000 is significantly less than the maximum calculated penalty that could be imposed.

There are two guidance memorandums that are relevant to the civil penalty calculation in this case: (1) the Department's 1990 Civil Penalty Policy (CPP); and (2) the Division of Environmental Enforcement's Petroleum Bulk Storage Inspection Enforcement Policy (DEE-22).

The complaint alleged three causes of action, based upon Department staff's November 14, 2007, inspection at respondent's

Petroleum Bulk Storage (PBS) Facility (#4-134791) located at 2470 Albany Street, Schenectady, New York. First, that the respondent had not properly listed its underground storage tank on the facility's registration and that the registration had expired on March 24, 2007 in violation of 6 NYCRR 612.2(a)(2). Second, that the respondent had failed to maintain the spill prevention equipment at the facility in good working order, specifically, there was water in the catch basins for two of the three fill port sumps, in violation of 6 NYCRR 613.3(d). Third, that the respondent had failed to properly label the underground tank at the facility, specifically that the required information was missing from the fill ports, in violation of 6 NYCRR 614.3(a).

The failure to submit a complete and accurate facility registration form needs to be corrected. The appropriate mechanism for doing this is for the respondent to complete a Petroleum Bulk Storage Information Correction Form (correction form) in a timely manner. Submission of the correction form fifteen days after the service of this order upon respondent is appropriate. On this correction form, the respondent shall indicate that the underground storage tank at the facility is a compartmentalized tank, and designate each compartment on the form with an alphabetical suffix (for example, the first compartment would be designated with an "A", the second compartment with a "B", etc.). The respondent should also review columns 17, 18, 19 and 20 on the correction form, including but not limited to the information relating to piping leak detection. Respondent must identify all forms of piping leak detection and provide any other supplemental or revised information on the form as may be necessary to correct and update its facility petroleum bulk storage registration.

In his affidavit, Mr. Lightsey states that the baseline civil penalty calculation (based on DEE-22) would be \$2,800 for the three causes of action: (1) a total of \$2,000 for the failure to properly register the underground tank and failure to renew the facility's registration; (2) a total of \$500 for the failure to maintain the spill prevention equipment in good working order; and (3) a total of \$300 for the failure to properly label the underground tank. Mr. Lightsey states that the higher civil penalty sought by DEC staff of \$10,000 is justified in this case based on the respondent's history of non-compliance. Specifically, Mr. Lightsey notes that the respondent was subject to an Order on Consent (Exh. D) which became effective on January 9, 2006 (#R4-2005-1007-104). This consent order addressed earlier, similar violations to those alleged in this complaint (as well as other violations) and resulted in a civil penalty of \$11,000.

The Department's 1990 Civil Penalty Policy ("CPP") requires

that the gravity of the violations (CPP IV.C) and the economic benefits of the non-compliance (CPP IV.D) be assessed. The CPP also allows penalty adjustments (CPP IV.E). The factors to consider with respect to gravity are (1) potential harm and actual damage caused by the violations (CPP IV.D.2.a) and (2) relative importance of the type of violations in the context of the Department's overall regulatory scheme (CPP IV.D.2.b).

Because the respondent has not responded to the complaint or appeared to contest this motion, there is no evidence of a lack of ability to pay (CPP IV.E.4) or any unique factors (CPP IV.E.5) that would mitigate the relief staff seeks.

Recommendation and Conclusion

Staff's motion for a default judgment meets the requirements of 6 NYCRR 622.15(b). In addition, I find staff's request for a civil penalty of \$10,000 and the filing of a PBS information correction form to properly register the facility appropriate. Therefore, in accordance with 6 NYCRR 622.15(c), this summary report is submitted to the Commissioner, accompanied by a proposed order.

Dated: Albany, New York
May 18, 2009

_____/s/_____
P. Nicholas Garlick
Administrative Law Judge