

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

In the Matter of the 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) part 613,

ORDER

File No. R5-20210113-2340
PBS No. 5-600601

-by-

**PATRIOTS' PATH COUNCIL, INC., BOY SCOUTS
OF AMERICA,**

Respondent.

This administrative enforcement proceeding concerns allegations that Patriots' Path Council, Inc., Boy Scouts of America (Patriots' Path or respondent), violated part 613 of 6 NYCRR at a petroleum bulk storage (PBS) facility known as the Sabattis Adventure Camp (property) that respondent owns. The facility, which is located at 1745 Sabattis Road in the Town of Long Lake, Hamilton County, New York, contains two aboveground storage tanks – a 1,000 gallon tank (designated as tank 06) and a 500 gallon tank (designated as tank 07).

Staff of the New York State Department of Environmental Conservation (DEC or Department) commenced this administrative proceeding by serving a notice of hearing and complaint dated June 24, 2021 (Complaint). The Complaint seeks an order of the Commissioner that: (i) finds Patriots' Path in violation of various provisions of 6 NYCRR part 613; (ii) assesses a total civil penalty of \$16,200; (iii) directs respondent to register its petroleum bulk storage facility and comply with other applicable regulatory requirements; and (iv) grants such other and further relief that I may determine to be just and appropriate.

Department staff alleges that respondent violated:

- i) 6 NYCRR 613-1.9(c), by failing to renew the registration for its PBS facility which expired on January 4, 2017;
- ii) 6 NYCRR 613-1.9(a), by failing to ensure that the PBS facility registration information remains current and accurate;
- iii) 6 NYCRR 613-1.9(g), by failing to display the current registration certificate at all times in a conspicuous location at the facility;

- iv) 6 NYCRR 613-4.1(b)(1)(ii), by failing to have a surface coating designed to prevent corrosion and deterioration on the two aboveground storage tanks;
- v) 6 NYCRR 613-4.2(a)(3), by failing to have aboveground storage tank 07 marked with its tank registration identification number, as well as its tank design and working capacities;
- vi) 6 NYCRR 613-4.3(a)(1)(i), by failing to inspect all aboveground storage tanks at monthly intervals in accordance with 6 NYCRR 613-4.3(b)(1); and 6 NYCRR 613-4.3(e) and 6 NYCRR 613-1.5(a), by failing to maintain monthly inspection records for at least three years and to have records available in the proper format, and make them available upon the Department's request; and
- vii) 6 NYCRR 613-4.1(b)(1)(iii), by failing to have the two aboveground storage tanks, which are in contact with the ground, protected from corrosion.

This matter was assigned to Administrative Law Judge Daniel P. O'Connell (ALJ) of the Department's Office of Hearings and Mediation Services. An administrative enforcement hearing was held on September 9, 2021, and the ALJ has prepared the attached report. I hereby adopt the ALJ's report as my decision in this matter subject to my comments below.

Patriots' Path neither answered the complaint nor appeared at the hearing (*see* Hearing Report at 2). Department staff at the September 9, 2021 hearing moved for a default judgment pursuant to 6 NYCRR 622.15. Staff set forth how each of the six elements that are required for a motion for default judgment were satisfied (*see* Hearing Transcript at 5-8). Staff then proceeded to present its case on the merits. The ALJ in the hearing report recommends that Department staff is entitled to a judgment on the facts proven at hearing. At the hearing, Department staff presented proof of facts sufficient to enable me to determine that staff has a viable claim. I concur that staff is entitled to a default judgment pursuant to 6 NYCRR 622.15.

The proof adduced at the hearing, and the pleadings and papers submitted therewith, demonstrates by a preponderance of the evidence that respondent committed the violations cited in the Complaint. The Department is entitled to judgment upon the facts proven.

BACKGROUND

On November 18, 2011, Department staff issued respondent a petroleum bulk storage (PBS) certificate (PBS No. 5-600601) for the facility's two aboveground storage tanks. The PBS certificate expired on January 4, 2017 (*see* Hearing Report at 2 [Finding of Fact No. 3]; Hearing Exhibits 6 and 7).

On February 18, 2015, Patriots' Path filed a petroleum bulk storage application to amend information about the PBS facility (*see* Hearing Report at 2 [Finding of Fact No. 4]; Hearing Exhibit 5). Respondent has not however filed an application to renew the expired PBS certificate and has not paid the renewal fees that are due.

Department staff inspected the facility on November 15, 2019. During that inspection staff observed numerous violations of the PBS regulations (*see* Hearing Report at 2-3 [Finding of Fact No. 5]). Although the Department had scheduled the inspection with the facility, no facility

representative was present at the time of the inspection (*see* Hearing Exhibit 8 [Notice of Violation], at page 1).

Department staff sent respondent a notice of violation (NOV) dated November 25, 2019 (*see* Hearing Exhibit 8). The NOV outlined the regulatory deficiencies at the facility and directed respondent to take corrective action (*see* Hearing Report at 3 [Finding of Fact No. 6]). Respondent did not respond to the NOV and Department staff sent a letter dated July 21, 2020 directing respondent to follow up on the information that staff had requested and to demonstrate facility compliance with the PBS requirements by August 21, 2020. Respondent did not respond to the July 21, 2020 correspondence by the August date. Subsequently, Department staff did receive an email from respondent's facility emergency contact dated March 5, 2021 (almost a year later) which contained only limited information (*see* Hearing Report at 3 [Findings of Fact Nos. 8 and 9]; Hearing Exhibit 10).

Subsequently, by e-mail dated September 8, 2021 (September 2021 email), respondent indicated that it had undertaken or planned to undertake certain actions to address some of the regulatory deficiencies listed in the NOV. However, respondent failed to provide any photographic or other documentary corroboration with respect to the referenced actions. Respondent also acknowledged that the two tanks continued to contain fuel. Although respondent indicated that it was in the process of selling the property, it did not identify the purchaser, nor has respondent furnished any documentation relating to the sale and the transfer of the property including but not limited to the transfer of ownership forms for a PBS facility (*see* 6 NYCRR 613-1.9[d]). Respondent noted other facts that it considered "mitigating circumstances" but provided very limited details regarding these circumstances.

LIABILITY

The ALJ has reviewed each of the alleged PBS violations that staff set forth in its complaint. The ALJ determined that respondent has since January 4, 2017 been in violation of the following requirements:

- to renew its PBS facility registration -- (*see* 6 NYCRR 613-1.9[c]); and
- to ensure that its PBS facility registration information remained current and accurate -- (*see* 6 NYCRR 613-1.9[a]).

Further, based on the ALJ's review, respondent has since November 15, 2019 been in violation of the following requirements:

- to display the facility's current registration certificate at all times in a conspicuous location at the facility -- (*see* 6 NYCRR 613-1.9[g]);
- to have a surface coating designed to prevent corrosion and deterioration on the two aboveground storage tanks -- (*see* 6 NYCRR 613-4.1[b][1][ii]);
- to mark tank 07 with its tank registration number as well as its design and working capacities -- (*see* 6 NYCRR 613-4.2[a][3]);
- to inspect all aboveground storage tanks at monthly intervals in accordance with 6 NYCRR 613-4.3(b)(1) -- (*see* 6 NYCRR 613-4.3[a][1][i]), and to maintain monthly

inspection records for at least three years, and to have records available in the proper format and make them available upon the Department's request – (*see* 6 NYCRR 613-4.3[e] and 6 NYCRR 613-1.5[a]); and

-- to have the two aboveground storage tanks, which are in contact with the ground, protected from corrosion -- (*see* 6 NYCRR 613-4.1[b][1][iii]).

(*See* Hearing Report at 6-8). I concur with the ALJ's determinations that respondent violated each of these regulatory provisions, with one minor notation. Department staff indicated that, with respect to the marking of aboveground storage tank 07, the design capacity was on the tank (*see* Hearing Transcript at 26), but its inspection noted that the labeling was incomplete (*see* Hearing Exhibit 8, at pages 2-3).

CIVIL PENALTY

ECL 71-1929 authorizes a civil penalty of up to \$37,500 per day for each violation of the PBS regulations. Department staff seeks a penalty in the amount of \$16,200 for respondent's violations of 6 NYCRR part 613. Department staff provided a thorough and detailed explanation for its penalty request, demonstrating clear support for the amount it requested. The ALJ evaluated the requested penalty in accordance with the Department's penalty policies, aggravating and mitigating factors and administrative precedent (*see* Hearing Report at 8-11), and concurred with Department staff's penalty request.

I note that respondent, in its September 2021 e-mail requested leniency "with regards to any fines owed" and noted financial circumstances (no operations at the Sabattis Adventure Camp for two years and a resultant lack of income).

Based upon my review of the record, the civil penalty that Department staff has requested in the amount of sixteen thousand two hundred dollars (\$16,200), and the ALJ has recommended, is authorized and appropriate.

Upon consideration of the record, and the status of the Sabattis Adventure Camp, I have however determined to suspend eleven thousand two hundred dollars (\$11,200) of the civil penalty contingent upon respondent's compliance with the terms and conditions of this order, including but not limited to the payment of the non-suspended portion of the penalty (five thousand dollars [\$5,000]) and the compliance with the remedial actions discussed below. Respondent shall submit the unsuspended portion of the penalty (that is, five thousand dollars [\$5,000]) to the Department within thirty (30) days of the service of this order upon respondent.

REMEDIAL ACTIONS

Department staff requests in its Complaint that respondent be directed to undertake various remedial actions and provide documentation to demonstrate the completion of these tasks.

I have considered the requested remedial actions based on this record and am also taking into account respondent's representation that it is selling the property. To that end, I note that

any new owner will be responsible for compliance with all petroleum bulk storage regulations applicable to this property. Failure of any new owner to comply with such regulations could subject it to enforcement action and civil penalties.

Based on this record, I am directing that respondent undertake the following remedial actions:

- 1) provide the Department with the name and contact information for the prospective purchaser of the property or if the property has been sold, with the name and contact information of the new owner;
- 2) submit to the Department an application to renew its PBS registration, with payment of the application fee in accordance with 6 NYCRR 613-1.9 or have any new owner submit an application to register the facility with the Department within 30 days of the transfer of the facility;
- 3) submit photographs to the Department showing the corrosion areas noted on tanks 06 and 07 at the facility have been coated to comply with 6 NYCRR 613-4.1(b)(1)(ii) or provide documentation that the tanks have been closed in accordance with 6 NYCRR 613-4.5;
- 4) submit photographs to the Department showing that tank 07 has been labeled to comply with 6 NYCRR 613-4.2(a)(3) with the tank registration number, design capacity, and working capacity or provide documentation that the tanks have been closed in accordance with 6 NYCRR 613-4.5;
- 5) submit to the Department the last monthly inspection report for tanks 06 and 07 in accordance with 6 NYCRR 613-4.3(a)(1);
- 6) submit documentation to the Department showing that the bottoms of tanks 06 and 07 are protected from corrosion by either installing cathodic protection or removing the soil from the tank bottom, in accordance with 6 NYCRR 613-4.1(b)(1)(iii) or provide documentation that the tanks have been closed in accordance with 6 NYCRR 613-4.5; and
- 7) furnish a copy of the facility's petroleum bulk storage application dated February 19, 2015, a copy of the facility's petroleum bulk storage certificate, and a copy of Department staff's November 25, 2019 Notice of Violation for this facility to any new or prospective new owner, with a confirming letter to the Department that these documents have been provided to any new owner or prospective new owner. Respondent shall copy any new owner or prospective new owner on the confirming letter.

I hereby direct respondent to address the above-listed remedial actions and submit to the Department the requested documentation within sixty (60) days of the service of this order upon respondent except that the information contained in remedial actions no. 1 (name and contact information for a prospective new owner or new owner) and no. 7 (confirming letter) shall be provided to the Department within ten (10) days of the service of this order upon respondent.

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

- I. Department staff's motion for default judgment is granted, as respondent Patriots' Path Council, Inc., Boy Scouts of America is in default pursuant to 6 NYCRR 622.15.
- II. Respondent Patriots' Path Council, Inc., Boy Scouts of America at its facility located at 1745 Sabattis Road in the Town of Long Lake, Hamilton County, New York is adjudged to have violated the following:
 - A. 6 NYCRR 613-1.9(c), by failing to renew the registration for its PBS facility which expired on January 4, 2017;
 - B. 6 NYCRR 613-1.9(a), by failing to ensure that the PBS facility registration information remains current and accurate;
 - C. 6 NYCRR 613-1.9(g), by failing to display the current registration certificate at all times in a conspicuous location at the facility;
 - D. 6 NYCRR 613-4.1(b)(1)(ii), by failing to have a surface coating designed to prevent corrosion and deterioration on the two aboveground storage tanks;
 - E. 6 NYCRR 613-4.2(a)(3), by failing to have aboveground storage tank 07 marked with the tank registration identification number, and working capacity;
 - F. 6 NYCRR 613-4.3(a)(1)(i), by failing to inspect all aboveground storage tanks at monthly intervals in accordance with 6 NYCRR 613-4.3(b)(1); and 6 NYCRR 613-4.3(e) and 6 NYCRR 613-1.5(a), by failing to maintain monthly inspection records for at least three years and to have records available in the proper format, and make them available upon the Department's request; and
 - G. 6 NYCRR 613-4.1(b)(1)(iii), by failing to have the two aboveground storage tanks, which are in contact with the ground, protected from corrosion.
- III. Respondent Patriots' Path Council, Inc., Boy Scouts of America is hereby assessed a civil penalty in the amount of sixteen thousand two hundred dollars (\$16,200). Of this amount, eleven thousand two hundred dollars (\$11,200) of the civil penalty shall be suspended contingent upon respondent's compliance with the terms and conditions of this order including but not limited to the payment of the non-suspended portion of the penalty (that is, five thousand dollars [\$5,000]) and completion of the remedial actions set forth in paragraphs V and VI of this order in a manner satisfactory to Department staff.
- IV. Within thirty (30) days of service of this order upon respondent Patriots' Path Council, Inc., Boy Scouts of America, respondent shall pay the nonsuspended portion of the civil penalty (that is, five thousand dollars [\$5,000]) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation. The payment of the civil penalty shall be sent to the following address:

Aaron A. Love, Esq.
Assistant Regional Attorney
NYSDEC Region 5
1115 State Route 86, PO Box 296
Ray Brook, New York 12977-0296

If respondent fails to comply with any term or condition of this order, the suspended portion of the penalty (eleven thousand two hundred dollars [\$11,200]) shall be immediately due and payable and shall be submitted to the Department in the same manner and to the same address as the non-suspended portion of the penalty.

- V. Within ten (10) days of service of this order upon respondent Patriots' Path Council, Inc., Boy Scouts of America, respondent shall:
- A. provide the Department with the name and contact information for the prospective purchaser of the property or if the property has been sold, with the name and contact information of the new owner; and
 - B. furnish a copy of the facility's petroleum bulk storage application dated February 19, 2015, a copy of the facility's petroleum bulk storage certificate, and a copy of Department staff's November 25, 2019 Notice of Violation for this facility to any new or prospective new owner, with a confirming letter to the Department that these documents have been provided to any new owner or prospective new owner. Respondent shall copy any new owner or prospective new owner on the confirming letter.
- VI. Within sixty (60) days of service of this order upon respondent Patriots' Path Council, Inc., Boy Scouts of America, respondent shall:
- A. submit to the Department an application to renew its PBS registration, with payment of the application fee in accordance with 6 NYCRR 613-1.9 or have any new owner submit an application to register the facility with the Department within 30 days of the transfer of the facility;
 - B. submit photographs to the Department showing the corrosion areas noted on tanks 06 and 07 at the facility have been coated to comply with 6 NYCRR 613-4.1(b)(1)(ii) or provide documentation that the tanks have been closed in accordance with 6 NYCRR 613-4.5;
 - C. submit photographs to the Department showing that tank 07 has been labeled to comply with 6 NYCRR 613-4.2(a)(3) with the tank registration number, design capacity, and working capacity or provide documentation that the tanks have been closed in accordance with 6 NYCRR 613-4.5;
 - D. submit to the Department the last monthly inspection report for tanks 06 and 07 in accordance with 6 NYCRR 613-4.3(a)(1); and
 - E. submit documentation to the Department showing that the bottoms of tanks 06 and 07 are protected from corrosion by either installing cathodic protection or removing the soil from the tank bottom, in accordance with 6 NYCRR 613-

4.1(b)(1)(iii) or provide documentation that the tanks have been closed in accordance with 6 NYCRR 613-4.5.

- VII. Respondent Patriots' Path Council, Inc., Boy Scouts of America shall file all submissions required paragraphs V and VI of this order with, and direct any questions or other correspondence to:

Aaron A. Love, Esq.
Assistant Regional Attorney
NYSDEC Region 5
1115 State Route 86, PO Box 296
Ray Brook, New York 12977-0296

- IX, The provisions, terms and conditions of this order shall bind respondent Patriots' Path Council, Inc., Boy Scouts of America and its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: /s/
Basil Seggos
Commissioner

Dated: February 10, 2022
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the 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) part 613, by

Hearing Report

Patriots' Path Council, Inc., Boy Scouts of America,
Respondent.

File No. R5-20210113-2340
PBS No. 5-600601

Proceedings

Staff of the New York State Department of Environmental Conservation (Department staff) served Patriots' Path Council, Inc., Boy Scouts of America (Patriots' Path or respondent), with a notice of hearing and complaint, dated June 24, 2021, alleging violations of title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) part 613 (Petroleum Bulk Storage) at its petroleum bulk storage (PBS) facility known as the Sabattis Adventure Camp located at 1745 Sabattis Road in the Town of Long Lake (Hamilton County, New York). The complaint seeks an order of the Commissioner that: (i) finds Patriots' Path in violation of various provisions of 6 NYCRR part 613; (ii) assesses a total civil penalty of \$16,200; (iii) directs respondent to register its petroleum bulk storage facility, and comply with other applicable regulatory requirements; and (iv) grants such other and further relief the Commissioner may determine to be just and appropriate.

Patriots' Path is a not-for-profit corporation from New Jersey, and actively registered with the New York State Department of State, Division of Corporations (*see* Exhibit 4). Pursuant to New York State Not-For-Profit Law § 306(b), Department staff personally served Patriots' Path by delivering two copies of the June 24, 2021, notice of hearing and complaint, and a service process cover sheet to an employee of the New York State Department of State, Division of Corporations, on June 25, 2021 (*see* Exhibit 2). Department staff also provided additional service by sending the June 24, 2021, notice of hearing and complaint to respondent by first class mail on June 28, 2021 (*see* Exhibit 3).

Among other things, the notice advised that Patriots' Path's failure either to answer the complaint or to attend the hearing would result in a default and waiver of its right to a hearing (*see* Exhibit 1, *see also* 6 NYCRR 622.4[a] and 622.15[a]). The notice of hearing advised further that the Office of Hearings and Mediation Services (OHMS) would set a date for an administrative enforcement hearing. Patriots' Path failed to answer the complaint (Tr. at 5-8).

Subsequently, Department staff requested to convene the hearing, and OHMS served a notice of hearing, dated August 11, 2021, on Patriots' Path that scheduled an in-person adjudicatory hearing for 11:00 a.m. on September 9, 2021, at the Department's Region 5

Suboffice in Warrensburg, New York. OHMS served a revised notice dated August 30, 2021, to correct a typographical error. (Tr. at 4.)

The adjudicatory enforcement hearing convened as scheduled. Aaron A. Love, Esq., Assistant Regional Attorney, represented Department staff. Benjamin Hankins, Assistant Engineer (Environmental) from the Division of Environmental Remediation, testified for Department staff. No one appeared on behalf of Patriots' Path.

Because Patriots' Path neither answered the complaint nor appeared at the adjudicatory hearing, Department staff moved orally for a default judgment. Thereafter, staff presented its case on the merits. During the presentation, staff offered eleven exhibits through Mr. Hankins's testimony, and an exhibit chart is attached to this hearing report as Appendix A. OHMS received the transcript of the September 9, 2021 hearing on October 25, 2021. Whereupon, the record of the proceeding closed.

Findings of Fact

1. Patriots' Path Council, Inc., Boy Scouts of America, is registered with the New York State Department of State, Division of Corporations, as an active, foreign not-for-profit corporation with business offices located at 1 Saddle Road, Cedar Knolls, New Jersey 07927-1901 (*see* Exhibit 4; Tr. at 7-8).
2. Patriots' Path owns the Sabattis Adventure Camp located at 1745 Sabattis Road in the Town of Long Lake (Hamilton County, New York) (*see* Exhibits 5-7).
3. On November 18, 2011, Department staff issued Patriots' Path a petroleum bulk storage (PBS) certificate for two aboveground storage tanks (PBS No. 5-600601). Tank 06 was installed on April 1, 2002, and has a capacity of 1,000 gallons. It is used to store diesel. Tank 07 was installed on April 1, 2002, and has a capacity of 500 gallons. It is used to store gasoline. The combined storage capacity is 1,500 gallons. The PBS certificate issued to Patriots' Path expired on January 4, 2017. (*See* Exhibits 6 and 7, Tr. at 14-17.)
4. On February 18, 2015, Patriots' Path filed a petroleum bulk storage application to amend information about the PBS facility (*see* Exhibit 5). Despite providing this updated information, respondent did not file an application to renew the expired PBS certificate, and pay the renewal fees prior to January 2017. (Tr. at 13, 18, 24.)
5. Department staff inspected the Sabattis Adventure Camp on November 15, 2019, and observed the following. The PBS certificate was not displayed at the facility. Staff observed that portions of the label on Tank 07 had been scraped off, and the remaining portions of the label did not include the tank registration number, its design capacity, or its working capacity. Staff observed rust on Tanks 06 and 07. During the inspection, no representative from the PBS facility was at the site. Therefore, staff could not review the

monthly inspection reports for Tanks 06 and 07. Finally, staff could not readily read the overflow prevention device on Tank 07. (*See Exhibit 8; Tr. at 19-21, 24-29.*)

6. Subsequently, Department staff prepared a notice of violation (NOV) dated November 25, 2019, which outlined the regulatory deficiencies observed during the November 15, 2019, inspection. The November 25, 2019, NOV directed Patriots' Path to take corrective action. With the November 25, 2019, NOV, staff included a pre-populated petroleum bulk storage renewal application for the facility, instructions to complete the renewal application, and a PBS registration fee worksheet to determine the appropriate registration fee. (*See Exhibit 8; Tr. at 21-23, 29-30.*)
7. In the absence of a response to the November 25, 2019, NOV, Department staff sent Patriots' Path a letter dated July 21, 2020, to follow up on the information that staff requested including the renewal registration application. Staff set August 21, 2020, as the date for Patriots' Path to demonstrate that its PBS facility complied with all applicable requirements outlined in 6 NYCRR part 613. (*See Exhibit 9; Tr. at 31-32.*) Patriots' Path did not respond to either the November 25, 2019, NOV or the July 21, 2020, correspondence (*Tr. at 44*).
8. With an email from Keith Dlugosz¹ dated March 5, 2021, Department staff received two photographs dated October 18, 2020 (*see Exhibit 10*). One photograph depicted Tank 06, and the second photograph depicted Tank 07. The photograph of Tank 06 shows that the outside of the tank was repainted. However, the required labeling is missing. Also, the photograph shows that Tank 06 is sitting directly on the ground. Based on a review of the photograph, staff could not determine whether Tank 06 has the required cathodic protection. With respect to the second photograph, it shows that the outside of Tank 07 was partially repainted; some corrosion, particularly on the lower half of the tank, remains visible. In addition, the required labeling is missing. As with Tank 06, the photograph of Tank 07 shows that it is sitting directly on the ground. Based on a review of the photograph, staff could not determine whether Tank 07 has the required cathodic protection. (*See Exhibit 10; Tr. at 27-28, 32-35.*)
9. The March 5, 2021, email did not include any additional attachments such as a completed PBS renewal certification application, or the monthly monitoring reports requested in the November 25, 2019, NOV and the July 21, 2020, correspondence (*Tr. at 35*).
10. Pursuant to New York State Not-For-Profit Law § 306(b), Department staff personally served Patriots' Path by delivering two copies of the June 24, 2021, notice of hearing and complaint, and a service process cover sheet to an employee of the New York State Department of State, Division of Corporations, on June 25, 2021 (*see Exhibit 2*).

¹ On the February 2015 PBS Application (*see Exhibit 5*), and the PBS Certificate (*see Exhibit 7*), Mr. Dlugosz is identified as the facility's emergency contact.

11. Department staff also provided additional service by sending the notice of hearing and complaint to Patriots' Path by first class mail on June 28, 2021. For this mailing, Department staff relied on the information on file with the New York State Department of State, Division of Corporations. (*See* Exhibits 3 and 4; Tr. at 7-8.)
12. OHMS served a notice of hearing dated August 11, 2021, on Patriots' Path by first class mail, which notified respondent that the adjudicatory enforcement hearing would be held at 11:00 a.m. on September 9, 2021, at the Department's Region 5 Suboffice in Warrensburg, New York. Subsequently, OHMS served a revised notice of hearing dated August 30, 2021, on respondent by first class mail. The purpose of the revised notice was to correct a typographical error in the initial notice. (*See* Notice of Hearing dated August 11, 2021 and revised Notice of Hearing dated August 30, 2021.)
13. Patriots' Path did not file an answer to the complaint, and failed to appear for the administrative adjudicatory enforcement hearing held on September 9, 2021, as directed in the August 11, 2021, notice of hearing (Tr. at 5-6).

Discussion

I. Default Procedures

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, respondent's failure to appear at the hearing constitutes a default and waiver of respondent's right to a hearing (*see* 6 NYCRR 622.15[a]).

When, as here, a respondent does not answer a complaint or fails to appear for a pre-hearing conference or hearing, Department staff may move for a default judgment. Such a 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]).

The Commissioner has determined that “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). The Commissioner determined further that to 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 Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its 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* 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record developed on September 9, 2021, establishes the following. Department staff served the notice of hearing and complaint upon Patriots’ Path in a manner consistent with the regulations (*see* 6 NYCRR 622.3[a][3]). Respondent did not answer the complaint, as directed in the June 24, 2021, notice of hearing served with the complaint, and respondent failed to appear for the administrative enforcement hearing scheduled for September 9, 2021, as directed in the August 11, 2021, notice of hearing. At the September 9, 2021, administrative enforcement hearing, Department staff provided proof of the facts sufficient to support the violations alleged, and to allow me to determine that staff has a viable claim. The June 24, 2021, notice of hearing and complaint provide a concise statement of the relief requested. Staff’s presentation at the September 9, 2021, hearing included a statement of authority and support for the penalty and relief requested. Finally, Department staff provided proof of service of the notice of hearing and complaint upon Patriots’ Path. Respondent did not appear at the administrative enforcement hearing convened on September 9, 2021.

Based on the foregoing, Department staff is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15. In addition, as discussed further below, the proof adduced at the hearing, conducted in respondent’s absence, demonstrates by a preponderance of the evidence that respondent committed the violations charged in the complaint. Accordingly, Department staff is entitled to judgment on the facts proven at hearing.

II. Liability

In the June 24, 2021, complaint, Department staff alleged seven violations of 6 NYCRR part 613 based on staff’s observations during the November 15, 2019, inspection, and the photographs sent to Department staff with an email dated March 5, 2021, from Keith Dlugosz. Each alleged violation is discussed below.

1. Renewal Registration (6 NYCRR 613-1.9[c])

Pursuant to 6 NYCRR 613-1.9(c), the owner must renew the registration for its PBS facility every five years from the date of the last valid registration certificate until Department staff receives written notice and documentation from the owner that either the PBS facility has been permanently closed, or ownership of the facility has been duly transferred. On November 18, 2011, Department staff issued Patriots' Path a certificate for its PBS facility (No. 5-600601) located at the Sabattis Adventure Camp in the Town of Indian Lake (Hamilton County, New York). The PBS certificate was effective from November 18, 2011, to January 4, 2017. (*See Exhibit 7.*)

Before scheduling the November 15, 2019, site inspection, Department staff advised Patriots' Path that its PBS certificate had expired (Tr. at 19-20). With the November 25, 2019, NOV, Department staff included a pre-populated petroleum bulk storage renewal application form for the Sabattis Adventure Camp, instructions to complete the renewal application form, and a PBS registration fee worksheet to determine the appropriate registration fee. (*See Exhibit 8; Tr. at 22-24.*)

Prior to the expiration of its PBS certificate on January 4, 2017, Patriots' Path did not file an application to renew its PBS registration. Therefore, Patriots' Path violated 6 NYCRR 613-1.9(c). This violation has continued since January 4, 2017 (*see Exhibit 7; Tr. at 43-44.*)

2. Maintain Registration Information (6 NYCRR 613-1.9[a])

The facility owner must ensure that the registration information, such as the owner's contact information, among other things, is current and accurate (*see 6 NYCRR 613-1.9[a]*). With the November 25, 2019, NOV, Department staff included a pre-populated petroleum bulk storage renewal application form for the Sabattis Adventure Camp, instructions to complete the renewal application form, and a PBS registration fee worksheet to determine the appropriate registration fee.

Staff testified that Patriots' Path did not review, update, and correct the information presented in Sections A, B, and C of the pre-populated petroleum bulk storage renewal application form for the Sabattis Adventure Camp, and return a signed copy of the application to the Department, as directed in the November 25, 2019, NOV (*see Exhibit 8; Tr. at 22-24.*) Therefore, Patriots' Path violated 6 NYCRR 613-1.9(a). This violation has continued since the expiration of the PBS certificate on January 4, 2017, to the present (Tr. at 43-44).

3. Registration Certificate (6 NYCRR 613-1.9[g])

After receiving a complete registration application and payment of the applicable registration fee from the PBS facility owner, Department staff will issue a registration certificate. Upon receipt of the registration certificate, the owner must display the certificate at all times in a conspicuous location at the facility, pursuant to 6 NYCRR 613-1.9(g).

Staff inspected the PBS facility on November 15, 2019. During the inspection, staff observed that Patriots' Path did not display the PBS certificate in a conspicuous location at the facility. (See Exhibit 8; Tr. at 24-25.) Therefore, Patriots' Path violated 6 NYCRR 613-1.9(g). This violation has continued since staff's November 15, 2019, inspection to the present (Tr. at 43-44).

4. Surface Coating Maintenance (6 NYCRR 613-4.1[b][1][ii])

Section 613-4.1(b)(1)(ii) of 6 NYCRR requires every aboveground storage tank to have a surface coating designed to prevent corrosion and deterioration. Tanks 06 and 07 at the Sabattis Adventure Camp are aboveground storage tanks. During the November 15, 2019, inspection, staff observed rust and corrosion on Tanks 06 and 07. (Tr. at 25-27.) Patriots' Path, therefore, did not maintain a surface coating designed to prevent corrosion and deterioration on these tanks. As a result, Patriots' Path violated 6 NYCRR 613-4.1(b)(1)(ii). This violation applies to each of the two tanks, and the violations continued since staff's November 15, 2019, inspection to the present (Tr. at 43-44).

5. Tank Label (6 NYCRR 613-4.2[a][3])

Pursuant to 6 NYCRR 613-4.1(a)(3), every aboveground storage tank must be marked with the tank registration identification number, as well as the tank design and working capacities. The information required in the label may be stenciled on the tank.

During the inspection on November 15, 2019, Department staff observed that Tank 07 was not properly labeled. The registration number for Tank 07 was not legible. In addition, the design and working capacities for Tank 07 were not legible (Tr. at 26). Therefore, Patriots' Path violated 6 NYCRR 613-4.1(a)(3) because Tank 07 was not properly marked with the registration identification number, as well as the design and working capacities for the tank. This violation continued since staff's November 15, 2019, inspection to the present (Tr. at 43-44).

6. Monthly Inspections (6 NYCRR 613-4.3[a][1][i])

The facility owner must inspect all aboveground storage tanks at monthly intervals (*see* 6 NYCRR 613-4.3[a][1][i]). The inspections must check for leaks, cracks, areas of wear, corrosion and thinning, poor maintenance and operating practices, excessive settlement of structures, separation or swelling of tank insulation, malfunctioning equipment, and structural and foundation weaknesses (*see* 6 NYCRR 613-4.3[b][1]). To demonstrate compliance with the inspection requirements, every facility must maintain monthly inspection records for at least three years (*see* 6 NYCRR 613-4.3[e]). Pursuant to 6 NYCRR 613-1.5(a), the facility owner must maintain all records in either hard copy or electronic format. With respect to the results of the last 30 days of leak detection monitoring, the facility owner must make the records available to Department staff immediately upon request.

Prior to scheduling the November 15, 2019, site inspection, Department staff requested copies of the monthly inspection reports for the PBS facility. Staff did not receive the reports from Patriots' Path. (Tr. 28-29.) In the November 25, 2019, NOV and the letter dated July 21, 2020, Department staff also requested copies of the facility's most recent monthly inspection report (*see* Exhibits 8 and 9). Patriots' Path did not provide the responsive records (Tr. at 29-31).

Based on the foregoing circumstances, Patriots' Path violated 6 NYCRR 613-4.3(a)(1)(i), as well as the requirements related to the preparation, maintenance, and production of the records. This violation applies to each of the two tanks because Patriots' Path is obliged to inspect both tanks on a monthly basis, and to maintain the appropriate records each month that the facility operates. These violations continued month to month since staff's November 15, 2019, inspection to the present (Tr. at 43-44).

7. Corrosion Protection (6 NYCRR 613-4.1[b][1][iii])

When in contact with the ground, every aboveground storage tank must be protected from corrosion (*see* 6 NYCRR 613-4.1[b][1][iii]). Due to the snow surrounding Tanks 06 and 07, Department staff could not determine, during the November 15, 2019, inspection, whether these aboveground storage tanks were in contact with the ground and, if so, how they were protected from corrosion (Tr. at 20). With an email from Keith Dlugosz dated March 5, 2021, Patriots' Path sent separate photographs of Tank 06 and Tank 07, dated October 18, 2020, to Department staff (*see* Exhibit 10). Upon review of these photographs, staff determined that the bottoms of Tanks 06 and 07 are in direct contact with the ground and, therefore, must either be raised up from the ground, or protected against corrosion by use of cathodic protection, for example. Without additional information from the facility owner, staff could not determine whether Tanks 06 and 07 had the required corrosion protection based on the photographs. (*see* Exhibit 10; Tr. at 32-35.)

Given the circumstances described above, Patriots' Path has not demonstrated compliance with this requirement. Therefore, I conclude that Patriots' Path violated 6 NYCRR 613-4.1(b)(1)(iii). This violation applies to each of the two tanks, and the violations have continued from the November 25, 2019, inspection to the present (Tr. at 43-44).

III. Relief

With a motion for default judgment, staff must provide a concise statement of the relief requested (*see* 6 NYCRR 622.15[b][4]), and a statement of authority and support for any civil penalty or relief requested (*see* 6 NYCRR 622.15[b][5]). With reference to ECL 71-1929, staff requested a total civil penalty in the amount of \$16,200 in the June 24, 2021, complaint. Staff's presentation at the September 9, 2021, hearing elaborated on the requested civil penalty, which is based on the Department's Division of Environmental Enforcement *Civil Penalty Policy*, dated June 20, 1990 (DEE-1), DEE-22 titled, *Petroleum Bulk Storage Inspection Enforcement Policy*,

dated May 21, 2003,² and administrative precedent relating to similar violations (Tr. at 36-37). In addition, staff requested an order directing Patriots' Path to renew the registration, as well as to present documentation showing compliance with the requirements found to be in violation. Among them, the order should direct Patriots' Path to provide staff with copies of the latest monthly inspection reports for Tanks 06 and 07.

ECL 71-1929 provides for a civil penalty of up to \$37,500 per day for each violation. DEE-22 is a guidance document outlining the procedures that Department staff may use to address violations of the petroleum bulk storage regulations. The policy recommends a range of civil penalties for each PBS requirement when non-compliance is shown. In adjudicated cases, the policy states that greater civil penalties are warranted compared to those cases settled voluntarily with orders on consent. (Tr. at 47-48.)

Staff's presentation at the September 9, 2021, hearing included Exhibit 11, which is a civil penalty table. The table identifies the seven violations alleged in the complaint, describes the applicable requirement, identifies the item number from DEE-22, itemizes the requested civil penalty for each violation, and identifies the statutory maximum without considering the continuous nature of the violations. (Tr. at 37-38.)

For failing to timely renew the registration, in violation of 6 NYCRR 613-1.9(c), staff requested a civil penalty of \$1,000. Staff explained that the initial registration of PBS facilities and the subsequent renewal process are significant requirements associated with the regulation of PBS facilities. The process provides Department staff with the number of tanks, their contents, and their locations throughout the State. In DEC Region 5, staff has records concerning 1,300 PBS facilities in the Counties of Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, and Washington. (Tr. at 10, 38-39.)

For failing to maintain current registration information, in violation of 6 NYCRR 613-1.9(a), staff requested a civil penalty of \$1,000. Like the registration and renewal requirements, staff said that maintaining accurate records about each PBS facility, particularly information about the facility contact and the emergency contact persons are necessary to regulate PBS facilities and to protect the environment. Compliance with this requirement contributes to the regulatory scheme. Therefore, a violation of this requirement is significant. (Tr. at 39-40, 48-49.)

During the November 15, 2019, site visit, staff did not observe the registration certificate, which is a violation of 6 NYCRR 613-1.9(g) when not posted conspicuously at the facility. For this violation, staff requested a civil penalty of \$100 (Tr. at 40).

Maintaining the surface coating of each aboveground storage tank, as required by 6 NYCRR 613-4.1(b)(1)(ii), protects the integrity of the tanks and prevents leaks and spills of petroleum products. A potential environmental harm is associated with the failure to maintain surface coatings, which contributes to the gravity of the violations (Tr. at 48-49). As noted

² During the September 9, 2021 hearing, I took official notice of DEE-22 (*see* 6 NYCRR 622.11[a][5]; Tr. at 35).

above, staff observed that the coatings of Tanks 06 and 07 were not properly maintained. For each unmaintained tank, staff requested a civil penalty of \$1,500. Therefore, with respect to Tanks 06 and 07, the total civil penalty for these violations is \$3,000. (Tr. at 40.)

Staff demonstrated that the label on Tank 07 did not comply with the requirements outlined at 6 NYCRR 613-4.2(a)(3). For this violation, staff requested a civil penalty of \$100. The purpose of the label requirement is to identify the individual tanks at the PBS facility, and to prevent tanks from being overfilled with petroleum products during transfers (Tr. at 40-41).

By not providing the monthly inspection reports, Patriots' Path violated 6 NYCRR 613-4.3(a)(1)(i), and staff requested a civil penalty of \$500 per tank. Because there are two tanks at this PBS facility, there are two violations associated with these regulatory provisions, and the total requested civil penalty is \$1,000. Staff said that monthly inspections and keeping accurate records are essential to protecting the environment from petroleum releases. Staff relies on these records to ensure that the tanks are not leaking petroleum product. Compliance with this requirement contributes to the regulatory scheme. Therefore, violations of the recordkeeping requirements are significant. (Tr. at 41-42, 49-50.)

Based on the October 18, 2020, photographs of Tank 06 and 07 (*see* Exhibit 10), staff determined that Patriots' Path violated 6 NYCRR 613-4.1(b)(1)(iii) by failing to demonstrate that each tank has some acceptable form of corrosion protection. A potential environmental harm is associated with the failure to install corrosion protection because maintaining the integrity of aboveground storage tanks is vital to preventing petroleum releases. This potential environmental harm contributes to the gravity of the violations. (Tr. at 42-43, 48-49.) For each violation, staff requested a civil penalty of \$5,000. Because there are two tanks, the total requested civil penalty is \$10,000.

I conclude that the requested civil penalties for each demonstrated violation are consistent with the guidance outlined in the PBS penalty schedule appended to DEE-22. In addition, Department staff considered the guidance outlined in DEE-1, which is the Department's general civil penalty policy. With respect to DEE-1, staff identified the following aggravating and mitigating factors.

Staff considers the continuous nature of the violations and the duration of the violations to be aggravating factors. According to staff, respondent's violation of 6 NYCRR 613-1.9(c) began with the expiration of the PBS certificate on January 4, 2017 (*see* Exhibit 7) and continued until the hearing date, which is over 4½ years. The other violations alleged in the June 24, 2021 complaint began with staff's November 15, 2019 inspection and continued until the hearing date, which is about 22 months. (Tr. at 43-45.)

As a second aggravating factor, staff argued that Patriots' Path has shown no effort to cooperate with the Department to resolve the violations. Staff notes that the November 25, 2019, NOV provided Patriots' Path with a copy of the November 15, 2019, inspection report, and outlined the alleged violations at the Patriots' Path's PBS facility. With the November 25, 2019,

NOV, staff requested documentation from Patriots' Path to show compliance with all applicable regulations. When Patriots' Path did not respond, and did not provide the requested documentation, including copies of the monthly inspection reports, staff sent a letter dated July 21, 2020, to Patriots' Paths (*see* Exhibit 9). Staff enclosed a copy of the November 25, 2019, NOV with staff's July 21, 2020, letter and set August 21, 2020, as the date for respondent to demonstrate compliance with the regulations. As of the hearing date, staff did not receive any of the requested documentation from Patriots' Path. (Tr. at 44.)

With respect to mitigating factors, staff noted that the PBS facility consists of only two tanks with a total capacity of 1,500 gallons. According to staff, the PBS facility at Sabattis Adventure Camp is a relatively small one. (Tr. at 45.)

I conclude that staff's request for a civil penalty in the amount of \$16,200 is consistent with the applicable provisions of ECL article 71, the Department's penalty policies, as well as administrative precedent (*see e.g. Matter of KG Island Realty Corporation*, Order of the Commissioner, July 29, 2016, at 4).³ (Tr. at 49-51.)

Conclusions of Law

1. Patriots' Path Council Inc. violated 6 NYCRR 613-1.9(c) by failing to renew the registration for its PBS facility located at 1745 Sabattis Road, Long Lake, New York, on January 4, 2017. The violation has continued from January 4, 2017, to the present.
2. Respondent violated 6 NYCRR 613-1.9(a) when Patriots' Path did not review, update, and correct the information presented in Sections A, B, and C of the pre-populated petroleum bulk storage renewal application form, and return a signed copy of the application to the Department. This violation has continued since January 4, 2017, when the PBS certificate expired.
3. Patriots' Path violated 6 NYCRR 613-1.9(g) by failing to conspicuously display a valid PBS registration certificate at the facility. This violation has continued from November 15, 2019, to the present.
4. Respondent violated 6 NYCRR 613-4.1(b)(1)(ii) by not maintaining a surface coating designed to prevent corrosion and deterioration on Tanks 06 and 07. These violations have continued from November 15, 2019, to the present.
5. Patriots' Path violated 6 NYCRR 613-4.1(a)(3) because Tank 07 was not properly marked with the registration identification number, as well as the design and working

³ Staff also referenced *Matter of 12 Martense Assoc., LLC* (Order of the Commissioner, December 19, 2011, at 2.) However, the application of *12 Martense Assoc.* is limited to violations associated with heating oil tanks in New York City, which does not apply here (*see Matter of Yogiji Real Estate, LLC*, Order of the Commissioner, September 17, 2018, at 2, n 1).

capacities for the tank. This violation has continued from the November 15, 2019, inspection to the present.

6. Respondent violated 6 NYCRR 613-4.3(a)(1)(i), as well as the requirements related to preparing, maintaining, and producing records. This violation applies to Tanks 06 and 07, and the violations associated with each tank have continued month to month from November 15, 2019, to the present.
7. Patriots' Path violated 6 NYCRR 613-4.1(b)(1)(iii) because Tanks 06 and 07 are not protected from corrosion. These two violations have continued from the November 15, 2019, inspection to the present.
8. Department staff is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Recommendations

1. The Commissioner should issue an order granting Department staff's motion for default judgment, and conclude that Patriots' Path Council, Inc, Boy Scouts of America, is in default pursuant to 6 NYCRR 622.15.
2. Furthermore, the Commissioner should conclude that based on the proof adduced at the adjudicatory hearing, Patriots' Path violated various provisions of the petroleum bulk storage regulations (6 NYCRR part 613), as alleged in the June 24, 2021, complaint.
3. The Commissioner should issue an order that directs Patriots' Path to comply with the applicable requirements outlined in 6 NYCRR part 613 including, but not limited to, renewing the registration for the PBS facility located at the Sabattis Adventure Camp, and providing copies of the latest monthly inspection reports.
4. The Commissioner should assess a total civil penalty of \$16,200.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
October 27, 2021

Appendix A Exhibit Chart

Matter of Patriots' Path Council, Inc. Boy Scouts of America
DEC Case No. R5-20210113-2340
PBS No. 5-600601

Exhibit Chart

Hearing Date: September 9, 2021

Exhibit No.	Description	Received
1	Notice of Hearing and Complaint dated June 24, 2021 (without exhibits).	√
2	Affidavit of Service by Drew A. Wellette, sworn to July 2, 2021.	√
3	Affidavit of Mailing by Sheryl Quinn, sworn to June 29, 2021.	√
4	New York State Department of State Division of Corporations Entry Information for Patriots' Path Council, Inc. (current through August 31, 2021)	√
5	PBS Application for Sabattis Adventure Camp PBS No. 5-600601 (received on February 25, 2015)	√
6	PBS Facility Information Report for Sabattis Adventure Camp PBS No. 5-60061 (printed on June 16, 2021)	√
7	PBS Certificate No. 5-600601 for Sabattis Adventure Camp Date Issued: November 18, 2011 Expiration Date: January 4, 2017	√
8	Notice of Violation dated November 25, 2019 with attachments.	√
9	Letter dated July 21, 2020 from Benjamin Hankins to Keith Dlugosz.	√
10	Email dated March 5, 2021 from Keith Dlugosz to Aaron Love with photos dated October 18, 2020.	√
11	Civil Penalty Table.	√