

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

CERTIFIED - RETURN RECEIPT REQUESTED
9590 9403 0269 5155 5531 64

July 1, 2015

William Chamberlain
City of Troy
City Hall 433 River St.
Troy, NY 12180

Re: Order of Consent
R4-2014-0206-9
PBS# 4-443379

Dear Mr. Chamberlain:

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

This will also acknowledge receipt of \$750 1st of 11 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$259 is due on or before August 1, 2015.

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

ec: J. Utberg

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

 In the Matter of Violations of
 Article 17 of New York State Environmental
 Conservation Law

ORDER ON
 CONSENT

R4-2014-0206-9
 PBS # 4-443379

City of Troy
 City Hall
 433 River Street
 Troy, NY 12180

Respondent

 WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant Titles 3 and 10 of Article 17 of the ECL and the rules and regulations promulgated thereto.
2. Respondent, City of Troy, owns and/or operates a Petroleum Bulk Storage (“PBS”) facility (4-443379) known as Dept. of Public Works Complex, located at 3118 Seventh Avenue, Troy, NY 12180 (“facility”).
3. On September 30, 2014, Department staff inspected the facility and observed the following violations:

6 NYCRR 613.3(c)(3)(iii)	AST and/or gauge is/was not properly labeled with design capacity, working capacity and ID number
6 NYCRR 613.3 (d)	Inadequate maintenance of spill prevention equipment (water in sumps, inoperable alarms, sensors, etc.)
6 NYCRR 613.3(d)	Leak detection equipment not properly maintained
6 NYCRR 613.4	No daily and/or ten day reconciliation performed (five yrs. worth must be made available)
6 NYCRR 613.4(a)(2)	No alternative leak detection for unmetered tank
6 NYCRR 613.5	Tank and piping not tested as required
6 NYCRR 613.5(b)(3) & (4)	Not checking the operability of an electronic leak detections system monthly or keeping a record
6 NYCRR 613.6 (a) & (c)	Monthly inspection of AST not performed and no records maintained
6 NYCRR 614.5 (b)	Not monitoring interstitial space of double walled tank weekly
6 NYCRR 614.7 (d)	As built drawings not maintained on the premises

4. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 thru 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.
5. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and it agrees to be bound by the terms, provisions and conditions contained herein.

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

I. Penalty

Respondent is hereby assessed a civil penalty in the amount of THIRTEEN THOUSAND THREE HUNDRED SIXTY DOLLARS (\$13,360) for the violations stated herein. THREE THOUSAND THREE HUNDRED FORTY DOLLARS (\$3,340) of the civil penalty is due with the return of the signed and notarized Order to the Department. Payment of the civil penalty shall be made by bank check made payable to the Department of Environmental Conservation in accordance with the following payment schedule:

- 1) \$340 with the return of the signed and notarized Order; and
- 2) \$300 per month for the following ten months and due by the 1st of each month.

TEN THOUSAND TWENTY DOLLARS (\$10,020) of the civil penalty is suspended conditioned on Respondent's compliance with the Order's Schedule of Compliance. The suspended penalty shall be due and payable within 10 calendar days of receipt of a Notice of Violation from the Department setting forth the violations of the Order's Schedule of Compliance. Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. Schedule of Compliance

The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order on Consent and enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, contact and phone number and the PBS registration identification number.

III. Communications

All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Spill Engineer. All submittals shall have the following information: owner's name, facility name and address, and the PBS Identification number.

IV. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

V. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VII. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

VIII. Binding Effect

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

IX. Modification

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

XI. Effective Date

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

XII. Reservation of Rights

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

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

DATED: Rotterdam, New York
June, 30 2015

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit photos and documentation to the Department showing that the tank top sump is empty and clean of all liquids and that the tanks are properly labeled.
2. Within 30 days of the effective date of this Order, Respondent shall submit documentation showing the Tank 6 tightness test has been satisfactorily completed and that the leak detection monitoring system has been repaired or replaced. Respondent must also submit the last four weekly monitoring reports within 30 days after the leak detection monitoring systems became operational. If the monitoring system has not been repaired within 30 days of the effective date of this order, a work schedule must be submitted with the projected dates for when the system will be repaired.
3. Within 30 days of the effective date of this Order, Respondent shall submit accurate drawings or as-built plans for Tank 6 and its piping system. These plans must include a statement by the installer that the system has been installed in compliance with PBS regulations 6 NYCRR Part 614.
4. Within 30 days of the effective date of this Order, Respondent shall submit the most recent 30 days of properly reconciled inventory records for Tank 6.
5. By the 5th of each month, Respondent shall submit copies of the monthly visual inspection records for Tanks 5 and 5M for the previous month. This shall be required for the first three months after the effective date of this Order.

To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number, and the PBS registration identification number.