

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0005 8292 9891

July 26, 2016

Jack Conway, Supervisor
Town of East Greenbush
Town Hall
225 Columbia Turnpike
Rensselaer, NY 12144

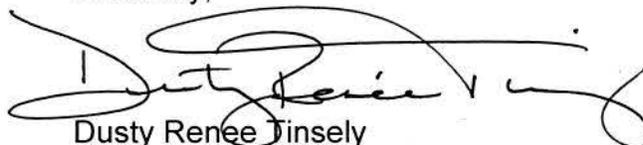
Re: Order on Consent
R4-2013-0320-47M
PBS# 4-485241

Dear Mr. Conway:

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

This will also acknowledge receipt of \$3,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsely
Assistant Regional Attorney
Region 4

Enclosure

cc: 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 and
6 New York State Compilation of Rules and
Regulations Part 613

ORDER ON CONSENT

-by-

R4-2013-0320-47M
PBS # 4-485241

Town of East Greenbush,
Respondent.

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.

RESPONDENT

2. Respondent, Town of East Greenbush, owns and/or operates a Petroleum Bulk Storage (“PBS”) facility (# 4-485241) known as the Town of East Greenbush Town Garage DPW, which is located at 69 Gilligan Road, East Greenbush, New York (Rensselaer County)(“Facility”). The Facility contains one or more tank systems having a combined storage capacity of more than 1,100 gallons or an underground tank system having a storage capacity that is greater than 110 gallons.
3. 6 NYCRR Part 613-1.3(w) defines “facility owner” as “any person who has legal or equitable title to the real property of a facility.”
4. 6 NYCRR Part 613-1.3(ao) defines “operator” as “any person who leases, operates, controls, or supervises a facility.”
5. Respondent is the facility owner and/or operator as defined in 6 NYCRR Part 613-1.3(w) and (ao).

VIOLATION OF PRIOR ORDER ON CONSENT

6. Respondent entered into an Order on Consent regarding violations of Article 17 of the ECL and the rules and regulations promulgated thereto, effective April 23, 2013 (R4-2013-0320-47)(“Order”).
7. The Order’s Schedule of Compliance required Respondent to:

Within 30 Days of the effective date of this Order, Respondent shall submit a work plan for the removal of the underground Gasoline Tank #205357 and installation of the new system. The work plan shall contain an anticipated work schedule. The work plan and schedule shall become enforceable under this Order.

8. Respondent failed to submit a work plan for the removal of the underground Gasoline Tank #205357.
9. Department staff conducted an inspection at the Facility on April 24, 2014 and observed that the underground Gasoline Tank #205357 had not been removed.
10. Respondent's failure to submit the work plan and remove the underground Gasoline Tank #205357 are violations of the Order.

ADDITIONAL VIOLATION

11. 6 NYCRR Part 613-2.4(d)(1) [formerly 6 NYCRR 613.8] states:

A facility must report every spill to the department's spill hotline (518-457-7362) within two hours after discovery, contain the spill, and begin corrective action in accordance with the requirements of Subpart 613-6 of this Part except if the spill meets the following conditions:
 - (i) it is known to be less than five gallons in total volume;
 - (ii) it is contained and under the control of the spiller;
 - (iii) it has not reached and will not reach the land or waters of the State; and
 - (iv) it is cleaned up within two hours after discovery.
12. During an April 24, 2014 inspection, Department staff observed an unreported spill. Gasoline was in the interstitial space of a double walled tank. The spill was not reported to the spill hotline.
13. Respondent's failure to report the spill to the spill hotline is a violation of 6 NYCRR Part 613-2.4(d)(1).

CIVIL PENALTY

14. The Order provided for a suspended penalty stating:

The balance of the penalty, THREE THOUSAND DOLLARS (\$3,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.
15. ECL §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.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Waiver of Hearing.** Respondent have affirmatively waived their right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and conditions of this Order.

II. **Civil Penalty/Suspended Penalty From Prior Order.** The THREE THOUSAND DOLLAR (\$3,000) suspended penalty contained in the Order on Consent R4-2013-0320-47, effective April 23, 2013, shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order.

III. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

IV. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

V. **Binding Effect.** This Order is binding upon the Respondents, their agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

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

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

VIII. **Modification.** The provisions of this Order constitute the complete and entire der issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advise, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

IX. **Access.** Respondents shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondents' compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

X. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

XI. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

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

C. The Department's right to enforce this Order against Respondent, their officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

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

E. Respondents' 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 waive 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.

XII. **Review of Submitted Documentation.** 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 make 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 accept such modifications as may be specified by Department to make it approvable. If Respondent do 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.

XIII. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent were not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIV. **Multiple Respondents.** If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

XV. **Communications.** Communications shall be sent to

For Department:

New York State Department of Environmental Conservation - Region 4
Attn: Regional Spill Engineer
1130 N. Westcott Road
Schenectady, New York 12306

For Respondents:

Anthony Corellis
Town of East Greenbush
225 Columbia Turnpike
Rensselaer, New York 12144

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: July 25, 2016
Rotterdam, New York

Basil Seggos
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 an approvable work plan to Department staff for review and approval for the removal of the underground Gasoline Tank #205357. The work plan shall contain an anticipated work schedule. The work plan and schedule shall become enforceable under 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.