

**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  
7011 1570 0003 0363 4052

March 11, 2016

Ronald E. Davis, Jr.  
HRTC Realty LLC  
2173 Rt. 203  
Chatham, NY 12037

Re: Order on Consent  
R4-2015-1222-142  
PBS #4-601308

Dear Mr. Davis:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: D. Pickett

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT  
R4-2015-1222-142  
PBS # 4-601308

HRTC Realty LLC  
2173 RT, 203  
Chatham, NY 12037

Respondent  
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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 to Article 17 of the ECL and the rules and regulations promulgated thereto.
2. Respondent, HRTC Realty LLC, owns and/or operates a Petroleum Bulk Storage ("PBS") facility (4-601308) known as The Hudson River Tractor Company, 2173 Rt. 203, Chatham, NY 12037 (Columbia County) ("facility").
3. On December 8, 2014, Department staff inspected the facility and observed the following violations:

|                          |   |
|--------------------------|---|
| 6 NYCRR 612.2            | Registration is/was not properly registered   |
| 6 NYCRR 612.2 (e)        | Registration is/was not posted at the facility  |
| 6 NYCRR 613.3 (b)        | Fill Port color coding is missing or incorrect (both above and underground tanks)                 |
| 6 NYCRR 613.3 (c)(3)(ii) | AST and/or gauge is/was not properly labeled with design capacity, working capacity and ID number |
| 6 NYCRR 613.3 (c)(5)     | Lines with a gravity head have nonfunctioning or missing operating valve                          |
| 6 NYCRR 613.6 (a) & (c)  | Monthly inspection of AST not performed and no records maintained                                 |

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.

## **REMEDIES**

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

### **I. Penalty**

With respect to the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND SEVEN HUNDRED DOLLARS (\$5,700) of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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.

The balance THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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.

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. Force Majeure**

Respondent shall not be in default of compliance with this Order if it is 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 was not a proximate cause. Respondent shall notify DEC 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.

### **IV. 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.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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.

XI. Entire Order

The provisions of this Order constitute the complete and entire Order 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 Paragraph X of this Order. No informal oral or written advice, 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 obligations to obtain such formal approvals as may be required by this Order.

XII. Effective Date

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

XIII. 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.

#### 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.

DATED: *March 11* 2016  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

HRTC Realty, LLC

Authorized Representative



SIGNED: RONALD E. DAVIS JR

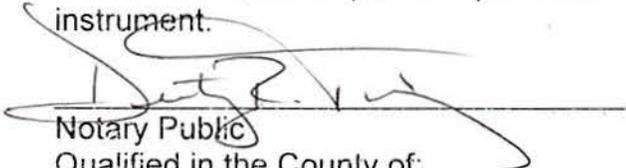
TITLE: MANAGING MEMBER

DATE: 3/10/2016

STATE OF New York )

)  
COUNTY OF Schenectady ) ss.:

On the 10<sup>th</sup> day of March in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Ronald E. Davis, Jr. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public  
Qualified in the County of:  
My Commission Expires:

DUSTY R TINSLEY  
Notary Public, State of New York  
Qualified in Albany County  
No. 02TI6330988  
My Commission Expires Sept 28, 2019

## SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit a photograph showing the displayed certificate.
2. Within 30 days of the effective date of this order, Respondent shall submit photos to certify that the fill ports for Tanks 1, 2, 3, 4 and 6 are correctly color-coded and the tanks are properly labeled.
3. Within 30 days of the effective date of this order, Respondent shall submit the last monthly inspection report for each of the six tanks.
4. Within 30 days of the effective date of this order, Respondent shall submit photos and documentation to certify that the operating valve to control gravity flow from Tank 2 has been installed.

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.