

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

7015 0640 0000 6900 2796

December 31, 2015

Town of Laurens
Attn: Rod Klafehn, Town Attorney
PO Box 273
Laurens, NY 13796

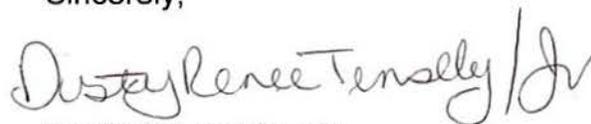
Re: Order of Consent
R4-2015-0917-108

Dear Mr. Klafehn:

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

This will also acknowledge receipt of \$3,375 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsely
Assistant Regional Attorney
Region 4

Enclosure

c: Oscar Oberkircher, Town Supervisor
Town of Laurens
37 Brook Street
Laurens, New York 13796



Department of
Environmental
Conservation

**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 NYCRR Parts 612 and 613,

ORDER ON CONSENT

-by-

R4-2015-0917-108
PBS # 4-462810

Town of Laurens
37 Brook Street
Laurens, NY 13796,

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 at 6 NYCRR Parts 612 and 613.

RESPONDENT

2. 6 NYCRR Part 612.1(c)(18) defines "owner" as "any person who has legal or equitable title to a facility."
3. 6 NYCRR Part 612.1(c)(16) defines "operator" as "any person who leases, operates, controls or supervises a facility."
4. Respondent, Town of Laurens, owns and/or operates a Petroleum Bulk Storage ("PBS") facility (4-462810) known as Laurens Highway Department, located at 35 Brook Street, Laurens, NY 13796 (Otsego County) ("Facility").

INSPECTION

5. On June 12, 2014, Department staff inspected the facility and observed violations of Environmental Conservation Law ("ECL") Article 17 and regulations promulgated thereunder at 6 NYCRR Parts 612 and 613.
6. Department staff sent Respondent a Notice of Violation dated June 13, 2014 setting forth the violations of ECL Article 17 and the regulations promulgated thereunder at 6 NYCRR Parts 612 and 613.
7. Department staff sent Respondent a Second Notice of Violation dated December 4, 2014 setting forth the violations of ECL Article 17 and the regulations promulgated thereunder at 6 NYCRR Parts 612 and 613.

FIRST VIOLATION

8. 6 NYCRR Part 612.2(a) states:

“Within one year of the effective date of these regulations, the owner of any petroleum storage facility having a capacity of over 1,100 gallons must register the facility with the department. This shall include any out-of-service facility which has not been permanently closed.”

and

“Registration must be renewed every five years from the date of the last valid registration until the department receives written notice that the facility has been permanently closed or that ownership of the facility has been transferred.”

9. During the June 12, 2014 inspection, Department staff determined that the Facility registration expired on March 28, 2014.
10. Department staff’s review of the files relevant to this matter concluded that Respondent has not filed a registration renewal.
11. Respondent’s failure to have the Facility properly registered is a violation of 6 NYCRR Part 612.2(a).

SECOND VIOLATION

12. 6 NYCRR Part 612.2(d) states that “Within 30 days prior to substantially modifying a facility, the owner must notify the department of such modification on forms supplied by the department.”
13. During the June 12, 2014 inspection, Department staff determined that the expired registration for the Facility does not reflect the current site status as the contact information has changed and there are two unregistered fuel oil tanks labelled 7 and 8.
14. Respondent’s failure to notify the Department of substantial modifications at the Facility are violations of 6 NYCRR Part 612.2(d).

THIRD VIOLATION

15. 6 NYCRR Part 613.3(d) states that the “owner or operator must keep all gauges, valves and other equipment for spill prevention in good working order.”
16. During the June 12, 2014 inspection, Department staff observed that the gauge(s) that provides overfill and spill prevention for aboveground storage tanks (“AST”) 1 and 2 is not being properly maintained.
17. Respondent’s failure to keep all gauges, valves and other equipment for spill prevention in good working order is a violation of 6 NYCRR Part 613.3(d).

FOURTH VIOLATION

18. 6 NYCRR Part 613.6(c)(1) states that “[r]eports for each monthly inspection and 10-year inspection must be maintained and made available to the department upon request for a period of at least 10 years.”
19. During the June 12, 2014 inspection, Department staff observed that Respondent failed to maintain records of monthly AST inspections and/or the records maintained are insufficient.
20. Respondent’s failure to maintain records and/or maintain sufficient records of monthly AST inspections are violations of 6 NYCRR Part 613.6(c)(1).

CIVIL PENALTY

21. 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.

WAIVER

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

I. **Civil Penalty.** In respect to the Order’s violations, a civil penalty for THREE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS (\$3,375) is assessed against the Respondent for the above violations. THREE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS (\$3,375) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation 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.

II. **Schedule of Compliance.** Respondents 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.

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

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

V. **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.

VI. **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 Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VII. **Modification.** 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 the provisions of the 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 obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent 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 Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

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

X. **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, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its 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 Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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.

XI. 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 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 accept 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.

XII. Communications. Communications shall be sent to

For Department:

Thomas Lane
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

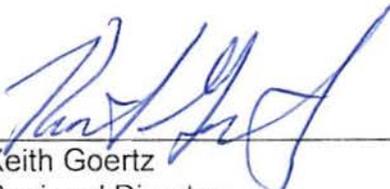
Town of Laurens
Highway Superintendent
37 Brook Street
Laurens, NY 13796

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

DATED: December 31, 2015
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 10 days of the effective date of this order, Respondent shall submit to the Department a corrected PBS registration renewal application, with appropriate fee, to inform the Department of the status of your facility, the appropriate contacts and/or the status of any particular tank.
2. Within 30 days of the effective date of this order, Respondent shall submit to the Department the last three monthly inspection reports.
3. Within 30 days from the effective date of this Order, Respondent shall submit to the Department photos and/or documentation to certify that the gauge(s) that provide overfill and spill prevention for Tanks 1 and 2 has been repaired and is in good working 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.