

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
7016 0340 0000 4616 5348

February 23, 2017

Mr. Tim Johncox
Stewart's Shops Corp.
PO Box 435
Saratoga Springs, NY 12866

Re: Order on Consent
R4-2017-0112-3

Dear Mr. Johncox:

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

This will also acknowledge receipt of \$550 the civil penalty pursuant to Paragraph I.

Sincerely,

Dusty Renee Tinsley/ JV

Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: L. Winterberger



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 Part
613

**ORDER ON
CONSENT**

R4-2017-0112-3

Stewart's Shops Corp.
P.O. Box 435
Saratoga Springs, NY 12866,

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 to Article 17 of the ECL and the rules and regulations promulgated thereunder.

RESPONDENT

2. 6 NYCRR Part 613-1.3(v) defines "facility" to mean "a single property, or contiguous or adjacent properties used for a common purpose which are owned or operated by the same person or persons, on or in which are located: (1) one or more tank systems having a combined storage capacity of more than 1,100 gallons (including a major facility); or (2) 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, Stewart's Shops Corp., owns and/or operates the following Petroleum Bulk Storage ("PBS") facilities:
 - a. Stewart's Shops #128 located at 288 Main Street, Middleburg, NY (Schoharie County), PBS #4-485624, and
 - b. Stewart's Shop #128 located at 305 Main Street, Middleburg, NY (Schoharie County), PBS # 4-601576.

Respondent closed Stewart's Shops #128 located at 288 Main Street and opened the Stewart's Shop #128 located at 305 Main Street. Both of these PBS facilities contain 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.

6. Respondent, Stewart's Shops Corp., owns and/or operates the following PBS facilities:
 - a. Stewart's Shop #163 located at 170 Main Street, Richfield Springs, NY (Otsego County), PBS #4-135690, and
 - b. Stewart's Shop #163 located at 119 Main Street, Richfield Springs, NY (Otsego County), PBS #4-601577.

Respondent closed Stewart's Shop #163 located at 170 Main Street and opened Stewart's Shop #163 located at 119 Main Street. Both of these PBS facilities contain 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.

7. Respondent is the owner and/or operator for Stewart's Shops #128 located at 288 Main Street, Stewart's Shop #128 located at 305 Main Street, Stewart's Shop #163 located at 170 Main Street, and Stewart's Shop #163 located at 119 Main Street (hereinafter referred to collectively as "Facilities").

INSPECTION

8. On December 16, 2016 Department staff inspected the Stewart's Shop #128 located at 305 Main Street, Middleburg, NY.

FIRST VIOLATION

Stewart's Shop #128 located at 305 Main Street, Middleburg, NY and Stewart's Shop #163 located at 119 Main Street, Richfield Springs, NY

9. 6 NYCRR Part 613-1.9(a) states "The facility owner must obtain an initial or revised registration certificate from the department prior to the first receipt of petroleum into a new or replaced tank system. The facility owner must ensure that the registration information identified in subdivision (e) of this section remains current and accurate. In addition, every temporary tank system that is not removed within 180 days after installation must either be included on a new facility registration or be added to an existing facility's registration. The facility owner may rely on an authorized representative to satisfy any obligation imposed on the owner by the provisions of this section."
10. Department staff have determined that Respondent failed to properly register Stewart's Shop #128 located at 305 Main Street, Middleburg, NY and Stewart's Shop #163 located at 119 Main Street, Richfield Springs, NY prior to the receipt of petroleum in a new or replaced tank system.
11. Respondent's failure to properly register Stewart's Shop #128 located at 305 Main Street, Middleburg, NY and Stewart's Shop #163 located at 119 Main Street, Richfield Springs, NY prior to the receipt of petroleum in a new or replaced tank system are violations of 6 NYCRR Part 613-1.9(a).

SECOND VIOLATION

Stewart's Shops #128 located at 288 Main Street, Middleburg, NY and Stewart's Shop #163 located at 170 Main Street, Richfield Springs, NY

12. 6 NYCRR Part 613-1.9(f) states "The facility owner must notify the department of permanent closure or change in service of tank systems using forms or electronic means as provided by the department."
13. Department staff have determined that Respondent failed to notify the Department of permanent closure of tank systems using forms or electronic means as provided by the Department for Stewart's Shops #128 located at 288 Main Street, Middleburg, NY and Stewart's Shop #163 located at 170 Main Street, Richfield Springs, NY.
14. Respondent's failure to notify the Department of permanent closure of tank systems using forms or electronic means as provided by the Department for Stewart's Shops #128 located at 288 Main Street, Middleburg, NY and Stewart's Shop #163 located at 170 Main Street, Richfield Springs, NY are violations of 6 NYCRR Part 613-1.9(f).

THIRD VIOLATION

Stewart's Shop #128 located at 305 Main Street, Middleburg, NY

15. 6 NYCRR Part 613-1.9(g) states "The current registration certificate must be displayed at all times in a conspicuous location at the facility."
16. During the December 16, 2016 inspection, Department staff observed that the registration was not posted at Stewart's Shop #128 located at 305 Main Street, Middleburg, NY.
17. Respondent's failure to display at all times in a conspicuous location at the facility the current registration certificate is a violation of 6 NYCRR Part 613-1.9(g).

FOURTH VIOLATION

Stewart's Shop #128 located at 305 Main Street, Middleburg, NY

18. 6 NYCRR Part 613-2.2(a)(3) states "Every category 2 or 3 UST system must have a label at the fill port specifying tank registration identification number, tank design and working capacities, and type of petroleum that is able to be stored in the UST system."
19. Stewart's Shop #128 located at 305 Main Street, Middleburg, NY has three category 3 UST systems.
20. During the December 16, 2016 inspection, Department staff observed that Respondent failed to label at the fill ports for the category 3 UST systems with the tank registration identification number, tank design and working capacities, and type of petroleum that is able to be stored in the UST system.

21. Respondent's failed to label at the fill ports for the category 3 UST systems with the tank registration identification number, tank design and working capacities, and type of petroleum that is able to be stored in the UST system is a violation of 6 NYCRR Part 613-2.2(a)(3).
22. 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.
23. 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 violations identified in this Order, Respondents are hereby assessed a civil penalty of FIVE HUNDRED FIFTY DOLLARS (\$550) which 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 above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

II. Communications

All communications required herein to the Department shall be made to the Department at DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Lynn Winterberger. All communications required herein to Respondent shall be made to Stewart's Shops Corp., PO Box 435, Saratoga Springs, NY 12866, Attn. Tim Johncox. All submittals shall have the following information: owner's name, facility name and address, and the PBS Identification number.

III. Access

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

IV. 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.

V. Indemnification

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, and/or 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.

VI. 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.

VII. 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.

VIII. 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.

IX. Effective Date

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

X. 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.

XII. Full Settlement

Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations contained in this Order.

DATED: Rotterdam, New York
February 22, 2017

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent Stewart's Shops Corp. 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.

BY: TIM JOHNCOX

TITLE: ENV. REMEDIATION & COMPLIANCE

DATE: 2/15/17

STATE OF NEW YORK)
) ss.:
COUNTY OF SARATOGA)

On the 15TH day of FEBRUARY in the year 2017, before me, the undersigned, personally appeared (Full name) TIMOTHY C. JOHNCOX personally known to me who, being duly sworn, did depose and say that he/she/they reside at PO Box 435, SARATOGA SPRINGS, NY 12866 (Full mailing address) and that he/she/they is (are) the DIRECTOR - ENV. COMPLIANCE & REMEDIATION (President or other officer or director or attorney in fact duly appointed) of the STEWART'S SHOPS CORPORATION (Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Paul Testo
Notary Public, State of New York

PAUL TESTO
Notary Public, State of New York
Qualified in Saratoga County
Registration No. #01TE5017092
My Commission Expires 9/30/17