

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 5430

March 23, 2017

Mr. George McAvoy
Tyler James Commercial Properties, LLC
200 Sweeney Drive
Troy, NY 12180

Re: Order on Consent
R4-2016-1117-163
PBS # 4-600759

Dear Mr. McAvoy:

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

This will also acknowledge receipt of \$500 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**

R4-2016-1117-163
PBS # 4-600759

Tyler James Commercial Properties, LLC
200 Sweeney Drive
Troy, New York 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 to Article 17 of the ECL and the rules and regulations promulgated thereunder.
2. Respondent, Tyler James Commercial Properties, LLC, owns and/or operates a Petroleum Bulk Storage ("PBS") facility (4-600759) at property located at 92 Parker School Road, Johnsonville, New York 12094 (Rensselaer County) ("Facility"). This Facility was previously owned/operated by the Brunswick Central School District.
3. 6 NYCRR Part 613-1.9(d) states that "1) If ownership of the real property on which a facility is located is transferred, the new facility owner must submit an application to initially register the facility with the department within 30 days after the transfer. (2) The facility owner must submit a registration application using forms or electronic means as provided by the department. Forms are available online at www.dec.ny.gov and at all department offices. (3) Each application for an initial registration or transfer of facility ownership must be accompanied by a copy of the current deed for the property at which the facility is located. If the facility is located on multiple properties, deeds for each property must be submitted with the application. If a deed does not exist for a particular property, the application must be accompanied by other evidence of ownership of the property. (4) The application must be signed by the facility owner. (5) Every registration application must be accompanied by payment of the applicable per-facility registration fee as shown in Table 1 of this section.
4. In June of 2016, Department staff determined that Respondent had not submitted to Department staff a Petroleum Bulk Storage Application, Change of Ownership, as required pursuant to 6 NYCRR Part 613-1.9(d) following the transfer of ownership of the Property from Brunswick Central School District to Respondent.

5. Respondent's failure to submit to Department staff a Petroleum Bulk Storage Application, Change of Ownership, following the transfer of ownership of the Property from Brunswick Central School District to Respondent is a violation of pursuant to 6 NYCRR Part 613-1.9(d).
6. 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.
7. 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, Respondent is hereby assessed a civil penalty of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) of which FIVE HUNDRED DOLLARS (\$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. ONE THOUSAND DOLLARS (\$1,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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

Respondent shall comply with the Schedule of Compliance and any plans approved thereunder which are incorporated into the Order on Consent and are 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 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.

IV. 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 the Respondent at 200 Sweeney Drive, Troy, New York 12180, Attn. Paul Donnelly. 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 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.

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 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.

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. Full Settlement

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

DATED: Rotterdam, New York
March 23, 2017

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order, Respondent shall submit to Department staff a completed and signed Petroleum Bulk Storage Application (Type: Change of Ownership) and its associated fee.

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.