

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Article 17 of the Environmental Conservation Law (“ECL”) and Part 613 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”),

**ORDER**

DEC File No.  
R4-2013-0409-52

- by -

**CHRISTOPHER STALKER,**

Respondent.

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This administrative enforcement proceeding addresses the alleged violations by respondent Christopher Stalker, who owns and operates a petroleum bulk storage (“PBS”) facility (PBS No. 4-600985), known as Hillsdale Repairs, located at 9254 Route 22, Hillsdale, New York (Columbia County). The PBS facility consists of three aboveground storage tanks (“ASTs”).

Staff of the New York State Department of Environmental Conservation (“Department”) served respondent with a notice of hearing and complaint on June 8, 2013. Respondent failed to answer, although such answer was due on or before June 28, 2013. By papers dated August 28, 2013, Department staff moved for a default judgment and order. This motion was served on respondent.

Department staff’s complaint alleges one cause of action related to respondent’s operation of the PBS facility. Specifically, Department staff alleges that respondent failed to conduct the required monthly inspections of the three ASTs (tanks #4, #5, and #6) at the facility in violation of 6 NYCRR 613.6(a). As a result of the alleged violations, Department staff requests an order: (1) finding respondent liable for the violations alleged in the complaint; (2) ordering respondent to pay a civil penalty in the amount of \$6,000; and (3) directing respondent to undertake certain corrective actions.

The matter was assigned to Administrative Law Judge (“ALJ”) P. Nicholas Garlick, who prepared the attached default summary report, which I adopt as my decision in this matter subject to my comments below. As set forth in the ALJ’s report, respondent Christopher Stalker failed to answer the complaint in this matter, and the ALJ recommends that Department staff’s motion for a default judgment be granted. I concur that staff is entitled to a default judgment pursuant to 6 NYCRR 622.15. Review of the documents submitted on the motion establishes that all the requirements of 6 NYCRR 622.15 have been met. In addition, the proof submitted on the motion is sufficient to establish that respondent, as operator of the facility, violated 6 NYCRR 613.6(a) by not performing monthly inspections of the aboveground storage tanks at the facility.

Department staff has requested that I impose a civil penalty in the amount of six thousand dollars (\$6,000). To support the requested penalty, Department staff considered (a) ECL 71-1929, which provides for a penalty of up to \$37,500 per day per violation; (b) the Department's Civil Penalty Policy, pursuant to which staff calculated a baseline penalty amount of \$1,500 (\$500 for each of the three tanks); and (c) an upward adjustment based upon respondent's continued long-term failure to perform the required inspections (see Affidavit of David Pickett dated Aug. 26, 2013 ["Pickett Aff."] ¶¶ 3-11).

As described in the Pickett Affidavit, staff first learned of respondent's failure to inspect the tanks during a facility inspection by staff on March 22, 2012 (see Pickett Aff. ¶ 8). Staff thereafter issued to respondent a Notice of Violation ("NOV") dated April 17, 2012 relating to the failure to inspect the facility (id.; see also id. Exhibit ["Ex."] 1 [NOV dated April 17, 2012]). Subsequent to issuing the NOV, Mr. Pickett communicated with respondent on more than one occasion to elicit compliance, but respondent neither conducted the required inspections nor submitted to the Department any inspection records demonstrating that inspections had occurred (see id. ¶ 9). Mr. Pickett conducted a follow-up inspection of the facility on April 10, 2013, more than a year after his first inspection (see id. ¶ 10). At that time, Mr. Pickett confirmed that respondent was still not conducting the required monthly inspections of the tanks (id.).

Based on this record, the proposed civil penalty of six thousand dollars (\$6,000) for the violations alleged in the complaint is authorized and appropriate. Respondent is directed to pay this penalty within thirty (30) days of the service of this order upon him.

In addition, Department staff requests that I require respondent to: (a) submit to Department staff, within thirty (30) days of service of this order on respondent, documentation to certify that the monthly inspections of the three ASTs are being conducted and that records of those inspections are being maintained; and (b) submit monthly inspection reports by the 5<sup>th</sup> of each month for the three ASTs for the three months from the effective date of this order. In this regard, the monthly inspection reports for February 2015, would be due to be submitted to Department staff by the 5<sup>th</sup> of March 2015, the monthly inspection reports for March 2015 would be due to be submitted to Department staff by the 6<sup>th</sup> of April (the 5<sup>th</sup> being a Sunday), and the monthly inspection reports for April would be due to be submitted to Department staff by the 5<sup>th</sup> of May). The corrective actions that Department staff requests are authorized and appropriate.

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer the complaint in this matter, respondent Christopher Stalker waived his right to be heard. Accordingly, the factual allegations of the complaint are deemed to have been admitted by respondent.

- II. Based upon the allegations of the complaint and the documents submitted in support of the motion, respondent Christopher Stalker is adjudged to have violated 6 NYCRR 613.6(a) by failing to conduct the required monthly inspections of the three aboveground storage tanks (tanks #4, #5, and #6) at PBS facility No. 4-600985, located at 9254 Route 22, Hillsdale, New York.
- III. Within thirty (30) days of the service of this order upon respondent Christopher Stalker, respondent shall pay a civil penalty in the amount of six thousand dollars (\$6,000). Payment shall be made in the form of a certified check, cashier's check, or money order payable to the New York State Department of Environmental Conservation. The payment shall be mailed or otherwise delivered to the following address:

New York State Department of Environmental Conservation  
Region 4 Office  
1130 North Westcott Road  
Schenectady, New York 12306  
Attention: Richard Ostrov, Esq., Regional Attorney.
- IV. Within thirty (30) days of service of this order upon respondent Christopher Stalker, respondent shall submit to Department staff, at the address referenced in paragraph III of this order, documentation to certify that the monthly inspections of the aboveground storage tanks (tanks #4, #5 and #6) are being conducted and that records of those inspections are being maintained.
- V. For three months following service of this order upon respondent Christopher Stalker, respondent shall submit to Richard Ostrov, Esq., at the address referenced in paragraph III of this order, monthly inspection reports by the 5th day (or the first business day thereafter) for tanks #4, #5 and #6 at the facility. In this regard, the monthly inspection reports for February 2015 would be due to be submitted to Department staff by the 5<sup>th</sup> of March 2015, the monthly inspection reports for March 2015 would be due to be submitted to Department staff by the 6<sup>th</sup> of April (the 5<sup>th</sup> being a Sunday), and the monthly inspection reports for April would be due to be submitted to Department staff by the 5<sup>th</sup> of May.
- VI. All questions and correspondence regarding this order shall be addressed to Richard Ostrov, Esq., at the address referenced in paragraph III of this order.

- VII. The provisions, terms and conditions of this order shall bind respondent Christopher Stalker, and his agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By:

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Joseph J. Martens  
Commissioner

Dated: February 17, 2015  
Albany, New York

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Article 17 of  
the New York State Environmental Conservation Law and  
Part 613 of Title 6 of the Official Compilation  
of Codes, Rules and Regulations of the State of  
New York ("6 NYCRR"),

DEFAULT SUMMARY  
REPORT

DEC File #  
R4-2013-0409-52

-by-

**CHRISTOPHER STALKER,**

Respondent.

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This summary report addresses a motion for default judgment, pursuant to 6 NYCRR 622.15, by staff of the New York State Department of Environmental Conservation ("Department staff") against Christopher Stalker ("respondent"). Mr. Stalker owns and operates a petroleum bulk storage ("PBS") facility (PBS #4-600985), known as Hillsdale Repairs, located at 9254 Route 22, Hillsdale, New York (Columbia County). The PBS facility consists of three aboveground storage tanks ("ASTs").

Department staff served a notice of hearing and complaint upon respondent by certified mail on June 8, 2013. The respondent failed to answer, though such answer was due on or before June 28, 2013. By papers dated August 28, 2013, Department staff moved for a default judgment and order. This motion was served on respondent. Department staff's motion papers included: (1) a cover letter; (2) the notice of motion for default judgment and order; (3) the motion for default judgment and order; (4) the affirmation of Department staff counsel Jill Phillips; and (5) the affidavit of David Pickett. Attached to Ms. Phillips' affirmation are: (1) an affidavit of service of the notice of hearing and complaint and postal receipts; (2) cover letters dated April 11, 2013 and May 3, 2013 regarding attempted settlement of this matter; (3) a copy of the complaint; (4) copies of the respondent's PBS certificate and PBS facility information report; and (5) a proposed order. Attached to Mr. Pickett's affidavit is a copy of an April 17, 2012 notice of violation.

Department staff's complaint alleged one cause of action related to an inspection of the respondent's PBS facility on April 10, 2013. Specifically, Department staff alleges that the respondent did not conduct the required monthly inspections of the three ASTs (tanks #4, #5, and #6) in violation of 6 NYCRR 613.6(a).

The complaint seeks an order of the Commissioner: (1) finding respondent liable for the violation alleged in the complaint; and (2) ordering respondent to pay a civil penalty in the amount of \$6,000. In addition, Department staff request that the Commissioner direct the respondent to: (1) within 30 days of service of the

Commissioner's order, submit to Department staff documentation to certify that the monthly inspections of the three ASTs are being conducted and that records of those inspections are being maintained; and (2) submit monthly inspection reports by the 5<sup>th</sup> of each month for the three ASTs for the three months after the service of the order.

### Default Provisions

Subdivision 622.15(a) of 6 NYCRR (default procedures) provides that a respondent's failure to file a timely answer, or other specified failures to respond, constitutes a default and a waiver of a respondent's right to a hearing. Subdivision 622.15(b) of 6 NYCRR states that a motion for default judgment must contain: "(1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear or failure to file a timely answer; and (3) a proposed order." Pursuant to prior Commissioner's decisions, Department staff is also expected to submit some proof of the violations alleged, including a copy of any PBS facility registration, PBS facility information report and notice of violation (see Matter of Farmer, Decision and Order of the Commissioner, Oct. 22, 2009).

In Matter of Alvin Hunt d/b/a Our Cleaners (Decision and Order of the Commissioner, July 25, 2006), the Commissioner set forth the process to be followed by an administrative law judge (ALJ) in reviewing a default motion. First, an examination of the proof of service of notice of hearing and complaint is required as well as the proof of the respondent's failure to appear or file a timely answer. Then, an ALJ must consider whether the complaint states a claim upon which relief may be granted and if so, whether the penalty and any remedial measures sought by staff are warranted and sufficiently supported.

In this case, Department staff has met the requirements of 6 NYCRR 622.15 and the complaint sets forth a cause of action for which relief can be granted. The complaint alleges that the respondent failed to conduct required monthly inspections of the three ASTs (tanks #4, #5, and #6) in violation of 6 NYCRR 613.6(a). Based on the information included in Department staff's papers, Department staff is entitled to a default judgment in this matter.

As the Commissioner stated in Hunt, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them [citations omitted]." Accordingly, the findings of fact set forth below are based upon the documents submitted into the record, as identified in the attached exhibit list.

### Applicable Regulatory Provisions

Regulations applicable to the handling and storage of petroleum are found at 6 NYCRR part 613. 6 NYCRR 613.6(a) requires a PBS owner or operator to conduct monthly inspections of above ground tanks. Part 613 was promulgated pursuant to the

Department's authority to regulate the storage and handling of petroleum found in titles 3 and 10 of article 17 of the ECL. ECL 71-1929 provides that any person who violates any provision of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable for a penalty not to exceed thirty-seven thousand five hundred dollars per day.

#### Findings of Fact and Conclusions of Law

1. Respondent Christopher Stalker owns and operates a PBS facility (PBS #4-600985), known as Hillsdale Repairs, located at 9254 Route 22, Hillsdale, New York (Columbia County).
2. On March 22, 2012, Department staff performed an inspection of the facility and on April 17, 2012 issued a notice of violation. On April 10, 2013, Department staff re-inspected the facility and determined that the respondent was not conducting required monthly inspections of the three ASTs (tanks #4, #5, and #6).
3. Respondent failed to comply 6 NYCRR 613.6(a) by failing to conduct the required monthly inspections of the three ASTs (tanks #4, #5, and #6).
4. On June 8, 2013, Department staff served the respondent with the notice of hearing and the complaint via certified mail. The respondent's time to answer expired on or before June 28, 2013. The respondent was also served with a copy of the motion for a default judgment and order by letter dated August 28, 2013.
5. The respondent failed to answer the complaint.
6. The \$6,000 penalty and remedial and corrective relief sought by Department staff are authorized and warranted on this record.

#### Discussion

The record of this proceeding demonstrates that respondent failed to comply with: 6 NYCRR 613.6(a) by not conducting the required monthly inspections of the three ASTs (tanks #4, #5, and #6). The record shows that respondent was served with the complaint on June 8, 2013 and did not answer the complaint. The respondent was also served with a copy of Department staff's motion for a default judgment and order. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

According to the affirmation of Department staff counsel Jill Phillips and the affidavit of Department staff member David Pickett, the requested penalty is reasonable and appropriate. In her affirmation, Department staff counsel Phillips states that consideration was given to the Department's Civil Penalty Policy (DEE-1, issued June 20, 1990). Ms. Phillips notes that the statutory maximum civil penalty for these

violations is \$37,500 per day, as authorized by ECL 71-1929. In determining the appropriate requested penalty in this case, Department staff considered the following factors: (1) the critical nature of the requirements violated by the respondent to the Department's petroleum bulk storage program; (2) the potential threat to human health and the environment from petroleum contamination; and (3) the pervasive nature of the violations and the respondent's indifference to compliance. In his affidavit, Mr. Pickett cites the Department's Petroleum Bulk Storage Inspection Enforcement Policy (DEE-22, issued May 21, 2003) and states that the suggested penalty of \$500 per tank should be adjusted upwards based on the respondent's failure to bring his facility into compliance after numerous attempts by Department staff. Based on this record, the \$6,000 payable civil penalty for the violations alleged in the complaint is authorized and appropriate.

Department staff also requests language in the Commissioner's order that directs respondent to: (1) within 30 days of service of the Commissioner's order, submit to Department staff documentation to certify that the monthly inspections of the three ASTs are being conducted and that records of those inspections are being maintained; and (2) submit monthly inspection reports by the 5<sup>th</sup> of each month for the three ASTs for the three months after the service of the order. Based on this record, this request is authorized and appropriate.

#### Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. granting Department staff's motion for default, finding respondent in default pursuant to the provisions of 6 NYCRR 622.15 for failing to answer the complaint;
2. finding respondent in violation of 6 NYCRR 613.6(a) for failing to conduct the required monthly inspections of the three ASTs (tanks #4, #5, and #6);
3. directing respondent to pay a total civil penalty in the amount of \$6,000 (six thousand dollars); and



4. directing respondent to: (1) within 30 days of service of the Commissioner's order, submit to Department staff documentation to certify that the monthly inspections of the three ASTs are being conducted and that records of those inspections are being maintained; and (2) submit monthly inspection reports by the 5<sup>th</sup> of each month for the three ASTs for the three months after the service of the order.

/s/

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P. Nicholas Garlick  
Administrative Law Judge

Dated: Albany, New York  
September 13, 2013