

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

---

In the Matter of the Alleged Violations of Article 12 of the New York State Navigation Law and Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York (17 NYCRR),<sup>1</sup>

**ORDER**

DEC File No.  
R3-20181213-215

-by-

**ALTA EAST, INC.,**

Respondent.

---

This administrative enforcement proceeding concerns allegations that Alta East, Inc. (respondent) violated Navigation Law article 12, and title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York (17 NYCRR) at respondent's eight petroleum bulk storage (PBS) facilities. These facilities where respondent formerly owned or operated gasoline stations were located at the following addresses: (i) 3103 Route 208, Wallkill, New York; (ii) 6 Cooley Road (a/k/a 1990 Route 17), Parksville, New York; (iii) 497 Route 32, Highland Mills, New York; (iv) 475 North Street, Middletown, New York; (v) 425 Route 208, Monroe, New York; (vi) 20 East Main Street, Walden, New York; (vii) 55 Route 6, Baldwin (Somers), New York; and (viii) 9 Maple Avenue, Warwick, New York.

Staff of the New York State Department of Environmental Conservation (DEC or Department) commenced this administrative enforcement proceeding by serving a notice of motion for order without hearing in lieu of complaint on the New York State Secretary of State on January 29, 2019, and mailing a second copy to respondent on February 7, 2019.

Department staff alleges that respondent violated:

- i) Navigation Law § 173, by illegally discharging petroleum at each of eight gasoline stations formerly owned and/or operated by respondent (first cause of action, eight counts); and
- ii) Navigation Law § 176 and 17 NYCRR 32.5, by failing to contain the illegal discharge at each of eight gasoline stations formerly owned and/or operated by respondent (second cause of action, eight counts).

---

<sup>1</sup> The reference to Part 663 in the caption of the attached summary report of the Administrative Law Judge is in error and is hereby stricken.

In its motion for order without hearing, Department staff requests that I: (i) hold that respondent committed the alleged violations; (ii) assess a civil penalty of \$160,000; and (iii) direct respondent to investigate, clean up and remove contamination from the spills at the sites under a Department-approved work plan. Respondent filed a notice of cross-motion and affirmation in opposition to staff's motion for an order without hearing, both dated March 21, 2019. On March 26, 2019, Department staff filed an affirmation in opposition to respondent's cross motion.

The matter was assigned to Administrative Law Judge (ALJ) P. Nicholas Garlick of the Department's Office of Hearings and Mediation Services. The ALJ prepared the attached summary report (Summary Report), in which he recommends that I:

- grant Department staff's motion for an order without hearing;
- deny respondent's cross-motion to dismiss this administrative enforcement matter;
- deny respondent's motion to join a third party, Sunoco LLC, as a necessary party to this proceeding;
- hold that respondent violated Navigation Law § 173, Navigation Law § 176 and 17 NYCRR 32.5, and is liable for the sixteen counts charged in Department staff's motion relating to eight separate petroleum spills;
- assess a civil penalty of \$160,000 against respondent; and
- direct respondent to fully investigate, clean up and remove contamination from the spills under work plans approved in advance by Department staff.

Summary Report at 11-12.

I adopt the ALJ's findings of fact, conclusions of law and recommendations as set forth in the ALJ Ruling and summary report, subject to my comments below.

### Factual Background

As set forth in the ALJ's summary report, Alta East, Inc. was an active domestic business corporation with principle executive offices at 50 Industrial Place, Middletown, New York (Affirmation of John K. Urda dated January 24, 2019 [Urda Affirmation], ¶ 3 and Exhibit A).<sup>2</sup>

Respondent operated or owned petroleum bulk storage (PBS) facilities located at the following addresses:

---

<sup>2</sup> As of April 16, 2020, Alta East, Inc. is no longer an active business corporation as noted in the entity information database of the New York State Department of State Division of Corporations entity information (current through February 23, 2021). Where, as here, violations relate to events that occurred prior to the dissolution of a business, subsequent dissolution of that business has no bearing on the proceeding (*see* Business Corporation Law [BCL] §§ 1006[a][4] & [b] and 1009; *Matter of AMI Auto Sales Corp.*, Decision of the Commissioner, February 16, 2012, at 5; *Matter of L-S Aero Marine, Inc.*, Order of the Commissioner, June 29, 2010, *adopting* ALJ's Default Summary Report [which, in part, cited BCL §§ 1005(a)(2), 1006(a) and 1009 as providing that a dissolved corporation continues its corporate existence for purposes of paying liabilities or obligations, for being sued, and to participate in administrative proceedings in its corporate name]).

- Respondent operated a gasoline station at 3103 Route 208, Wallkill, New York, registered with the Department as PBS Number 3-179728 (Urda Affirmation, Exhibit B at unnumbered pages 1-2). A spill was discovered and reported to the Department on September 24, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Affidavit of R. Daniel Bendell, P.E. sworn to January 24, 2019 [Bendell Affidavit], ¶ 5 and Exhibit A).
- Respondent operated a gasoline station at 6 Cooley Road (a/k/a 1990 Route 17), Parksville, New York, registered with the Department as PBS Number 3-047767 (Urda Affirmation, Exhibit B at unnumbered pages 3-4). A spill was discovered and reported to the Department on September 28, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 6 and Exhibit B).
- Respondent operated a gasoline station at 497 Route 32, Highland Mills, New York, registered with the Department as PBS Number 3-078859 (Urda Affirmation, Exhibit B at unnumbered pages 5-6). A spill was discovered and reported to the Department on September 28, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 6 and Exhibit C).
- Respondent operated a gasoline station at 475 North Street, Middletown, New York, registered with the Department as PBS Number 3-411469 (Urda Affirmation, exhibit B at unnumbered pages 7-8). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 7 and Exhibit D).
- Respondent owned and operated a gasoline station at 425 Route 208, Monroe, New York, registered with the Department as PBS Number 3-507083 (Urda Affirmation, Exhibit B at unnumbered pages 9-10). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 7 and Exhibit E).
- Respondent owned and operated a gasoline station at 20 East Main Street, Walden, New York, registered with the Department as PBS Number 3-413860 (Urda Affirmation, Exhibit B at unnumbered pages 11-12). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 7 and Exhibit F).
- Respondent operated a gasoline station at 55 Route 6, Baldwin (Somers), New York, registered with the Department as PBS Number 3-600034 (Urda Affirmation, Exhibit B at unnumbered pages 13-14). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor

during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 7 and Exhibit G).

- Respondent operated a gasoline station at 9 Maple Avenue, Warwick, New York, registered with the Department as PBS Number 3-461431 (Urda Affirmation, Exhibit B at unnumbered pages 15-16). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor during a Phase II subsurface investigation at the site (Bendell Affidavit, ¶ 7 and Exhibit H).

Respondent has failed to investigate or remediate any of the spills. (*see* Bendell Affidavit, ¶ 13).

#### First Cause of Action

Department staff alleges that respondent illegally discharged petroleum in violation of Navigation Law § 173 at each of the eight gasoline stations it owned or operated.

The ALJ notes that respondent's counsel acknowledges in his affirmation that respondent owned or operated each of the eight gas stations at issue at the time the spills were discovered, in September and October of 2015 (*see* Summary Report at 4).

Department staff further offers the Affidavit of R. Daniel Bendell, P.E., the Department's regional spill engineer. Mr. Bendell states that the spills were discovered and reported to the Department on various dates throughout September and October of 2015 by an environmental contractor while performing Phase II subsurface investigation at the eight sites as referenced in the Department spill report forms and records (Bendell Affidavit, ¶¶ 5-7 and Exhibits A-H).

I concur with the ALJ that, on this record, Department staff has established as a matter of law that respondent violated Navigation Law § 173 by illegally discharging petroleum at each of the eight gas stations that respondent owned or operated, as alleged in the first cause of action. In response, respondent has failed to raise a triable issue of fact requiring a hearing. Accordingly, Department staff is entitled to summary judgment on its first cause of action.

#### Second Cause of Action

Department staff alleges that respondent violated Navigation Law § 176 and 17 NYCRR 32.5, by failing to immediately clean up the spills at each of the eight gasoline stations it owned or operated.

On December 1, 2015, Mr. Bendell met with respondent's contractor and directed that an investigative work plan be submitted for the eight spills (Bendell Affidavit ¶ 9).

On April 5, 2016, respondent submitted work plans for the gas stations. The Department rejected them because the plans did not provide for investigations that would properly delineate the extent of the spills (Bendell Affidavit ¶ 10 and Exhibit I).

Department staff rejected a second set of proposed work plans submitted by respondent on August 24, 2018 because the only change that respondent made was the attachment of site maps (Bendell Affidavit ¶¶ 11 and Exhibit J.).

As of January 24, 2019, respondent failed to investigate or remediate the spills (Bendell Affidavit ¶¶ 12 and 13).

I concur with the ALJ that, on this record, Department staff has established as a matter of law that respondent violated Navigation Law § 176 and 17 NYCRR 32.5 by failing to immediately clean up the spills at each of the eight gas stations that respondent owned or operated, as alleged in the second cause of action. In response, respondent has failed to raise a triable issue of fact requiring a hearing. Accordingly, Department staff is entitled to summary judgment on its second cause of action.

### Respondent's Defenses

Respondent in this matter asserts that: (a) the motion for an order without hearing should be dismissed due to administrative delay that has irreparably injured respondent; (b) the motion for an order without hearing should be denied due to the dispute over liability for cleanup at the eight sites now owned by Sunoco LLC; and (c) Department staff should be directed to join Sunoco LLC as a necessary party to this proceeding.

The ALJ in the summary report has evaluated each of the defenses raised and I concur with his analysis that the motion should be rejected and that no basis has been provided to support directing that Sunoco LLC be joined as a necessary party in this proceeding (*see* Summary Report at 4-7).

Based on the record before me, I conclude that respondent's cross-motion should be denied.

### Civil Penalty

Section 192 of the Navigation Law provides for a penalty of not more than twenty-five thousand dollars (\$25,000) for violations of the Navigation Law article 12 or any rule promulgated thereunder. If the violation is of a continuing nature, each day during which the violation continues constitutes "an additional, separate and distinct offense" (Navigation Law § 192).

As noted in the summary report, the total maximum statutory penalty is in excess of \$483 million, based on the maximum daily penalty per day as per Navigation Law § 192 and the amount of time that has elapsed since the violations were discovered (*see* Summary Report at 10).

Department staff requests in its motion for order without hearing that I issue an order assessing a penalty against respondent in the amount of one hundred, sixty thousand dollars

(\$160,000). Department staff requested a specific penalty for each cause of action (Urda Affirmation at 11, ¶ 74). Department staff noted that spills at respondent's facilities have impacted soil and groundwater (*see id.* ¶ 82). In support of its penalty request, Department staff considered, in addition to Navigation Law § 192, various applicable Department enforcement and penalty policies, and relevant caselaw (*see id.* ¶¶ 77, 81). Department staff also discussed the multiple opportunities given to respondent to address the spills without enforcement, and that respondent has failed to cooperate (Urda Affirmation at 12, ¶ 78 and 13, ¶ 84).

I agree with the ALJ that a civil penalty totaling one hundred, sixty thousand dollars (\$160,000) is authorized and appropriate. However, taking into account the remediation activities required at the PBS facilities, I am imposing a payable penalty of eighty thousand dollars (\$80,000) and suspending the remaining eighty thousand dollars (\$80,000) contingent upon respondent's compliance with the terms and conditions of this order including, but not limited to, the undertaking and completion of the contamination cleanup and removal as directed by this order.

### Remedial Relief

Department staff requests and the ALJ recommends that I direct respondent to clean up and remove the contamination at the eight sites pursuant to Department-approved work plans (*see* Urda Affirmation at 14, Wherefore Clause ¶ 3).

Based on this record, I direct respondent to submit to the Department, within sixty (60) days of service of this order on respondent, an approvable remedial work plan for each of the eight sites by which respondent will fully investigate, clean up and remove the contamination at each location. Each work plan shall include a schedule and timetable for implementation of the plan and completion of the remedial activities. With respect to any materials removed from the sites, respondent must provide documentation that the materials were disposed at a facility authorized to receive such material.

With respect to the remedial work plan, "approvable" shall mean that which can be approved by the Department with only minimal revision. I encourage respondent to contact Department staff to discuss the requirements for the remedial work plans, including the implementation schedule and the documentation that Department staff may require with respect to the remediation activities.

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

- I. Department staff's motion for order without hearing pursuant to 6 NYCRR § 622.12 is granted.
- II. The cross-motion of respondent Alta East, Inc. is denied.

- III. Respondent Alta East, Inc. is adjudged to have violated:
- A. Navigation Law § 173, by discharging petroleum at the following eight gas stations:
- (i) 3103 Route 208, Wallkill, New York;
  - (ii) 6 Cooley Road (a/k/a 1990 Route 17), Parksville, New York;
  - (iii) 497 Route 32, Highland Mills, New York;
  - (iv) 475 North Street, Middletown, New York;
  - (v) 425 Route 208, Monroe, New York;
  - (vi) 20 East Main Street, Walden, New York;
  - (vii) 55 Route 6, Baldwin (Somers), New York; and
  - (viii) 9 Maple Avenue, Warwick, New York; and
- B. Navigation Law § 176 and 17 NYCRR 32.5, by failing to clean up the petroleum spill at the above-referenced eight gas stations.
- IV. Respondent Alta East, Inc. is hereby assessed a civil penalty of one hundred, sixty thousand dollars (\$160,000), of which eighty thousand dollars (\$80,000) is payable and the remaining amount (eighty thousand dollars [\$80,000]) is suspended contingent upon respondent's compliance with the terms and conditions of this order including but not limited to the undertaking and completion of the cleanup and removal as directed by this order.
- V. Within thirty (30) days of service of this order upon respondent Alta East, Inc., respondent shall pay the non-suspended portion of the civil penalty in the amount of eighty thousand dollars (\$80,000) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation. In the event that respondent Alta East, Inc. fails to comply with any term or condition of this order, the suspended portion (that is, eighty thousand dollars [\$80,000]) of the civil penalty shall become immediately due and payable and is to be submitted in the same manner and to the same address as the non-suspended portion of the civil penalty.
- VI. Within sixty (60) days of service of this order upon respondent Alta East, Inc., shall submit a remedial work plan for each of the sites listed in Paragraph III. A to the Department for Department review and approval. Pursuant to the work plans, respondent is to fully investigate, clean up and remove the contamination at each of the eight sites. Each work plan shall include a schedule and timetable for implementation of the plan and completion of the remedial activities. With respect to any materials removed from the site, respondent must provide documentation that the materials were disposed at a facility authorized to receive such material.

VII. Respondent Alta East, Inc. shall submit the penalty payment and all other submissions to the following:

Joyce Giudice, Esq.<sup>3</sup>  
Regional Attorney  
NYSDEC Region 3  
21 South Putt Corners Road  
New Paltz, New York 12561

VIII. Any questions or other correspondence regarding this order shall also be addressed to Joyce Giudice, Esq. at the address referenced in paragraph VII of this order.

IX. The provisions, terms and conditions of this order shall bind respondent Alta East, Inc. and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: /s/  
Basil Seggos  
Commissioner

Dated: March 10, 2021  
Albany, New York

---

<sup>3</sup> Regional Attorney John K. Urda, Esq. who represented Department staff in this proceeding is now employed by another governmental entity and is no longer with the DEC Region 3 office. In light of the foregoing, DEC Region 3 Regional Attorney Joyce Giudice, Esq. is now the Department contact on this matter.

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

---

In the Matter of the Alleged Violations of  
Article 12 of the Navigation Law and Part  
663 of Title 17 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York (17  
NYCRR),

- by -

**Alta East, Inc.,**

Respondent.

**Summary  
Report**

DEC File  
No.  
R3-  
20181213-  
215

---

**SUMMARY**

This summary report recommends that the Commissioner of the Department of Environmental Conservation (Department) issue an order that: (1) grants Department staff's motion for order without hearing in lieu of complaint; (2) denies the cross-motion of Alta East, Inc. (respondent) to dismiss this administrative enforcement matter; (3) denies respondent's motion to join a third party, Sunoco LLC, as a necessary party to this proceeding; (4) finds respondent liable for the sixteen counts of the violations alleged in Department staff's motion relating to eight separate petroleum spills; (5) imposes a payable civil penalty of \$160,000; and (6) directs respondent to fully investigate, clean up, and remove the contamination from the subject spills under work plans approved in advance by Department staff.

**PROCEEDINGS**

Department staff commenced this administrative enforcement proceeding by service of a notice of motion for order without hearing in lieu of complaint, an attorney affirmation, and supporting affidavit upon the New York State Secretary of State on January 29, 2019. A second copy of these papers was mailed to respondent on February 7, 2019 pursuant to CPLR 3215(g)(4).

After several extensions of the time to answer, in papers dated March 21, 2019, respondent's counsel opposed Department staff's motion and cross-moved seeking either: to have the proceeding dismissed due to the administrative delay that

irreparably prejudiced respondent; or to compel the joinder of Sunoco LLC as a necessary party.

In papers dated March 26, 2019, Department staff counsel replied to respondent's cross-motion.

On April 8, 2019, this matter was assigned to me.

The parties subsequently agreed to have this dispute mediated, but after several unsuccessful attempts to schedule a meeting, the matter was returned to me for preparation of this report.

#### **FINDINGS OF FACT**

1. Alta East, Inc. is an active domestic business corporation with principle executive offices at 50 Industrial Place, Middletown, New York (Urda affirmation, Exh. A).
2. Alta East, Inc. operated a gasoline station at 3103 Route 208, Wallkill, New York, which was registered with the Department as PBS Number 3-179728 (Urda affirmation, Exh. B at unnumbered pages 1-2). A spill was discovered and reported to the Department on September 24, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶5; Exh. A). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).
3. Alta East, Inc. operated a gasoline station at 6 Cooley Road (a/k/a 1990 Route 17), Parksville, New York, which was registered with the Department as PBS Number 3-047767 (Urda affirmation, Exh. B at unnumbered pages 3-4). A spill was discovered and reported to the Department on September 28, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶6; Exh. B). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).
4. Alta East, Inc. operated a gasoline station at 497 Route 32, Highland Mills, New York, which was registered with the Department as PBS Number 3-078859 (Urda affirmation, Exh. B at unnumbered pages 5-6). A spill was discovered and reported to the Department on September 28, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during

the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶6; Exh. C). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).

5. Alta East, Inc. operated a gasoline station at 475 North Street, Middletown, New York, which was registered with the Department as PBS Number 3-411469 (Urda affirmation, Exh. B at unnumbered pages 7-8). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶7; Exh. D). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).

6. Alta East, Inc. owned and operated a gasoline station at 425 Route 208, Monroe, New York which was registered with the Department as PBS Number 3-507083 (Urda affirmation, Exh. B at unnumbered pages 9-10). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶7; Exh. E). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).

7. Alta East, Inc. owned and operated a gasoline station at 20 East Main Street, Walden, New York, which was registered with the Department as PBS Number 3-413860 (Urda affirmation, Exh. B at unnumbered pages 11-12). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶7; Exh. F). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).

8. Alta East, Inc. operated a gasoline station at 55 Route 6, Baldwin (a/k/a Sommers), New York, which was registered with the County of Westchester as PBS Number 3-600034 (Urda affirmation, Exh. B at unnumbered pages 13-14). A spill was discovered and reported to the Department on October 6, 2015, by an environmental contractor, Groundwater and Environmental Services, Inc. during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶7; Exh. G). As of

January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).

9. Alta East, Inc. operated a gasoline station at 9 Maple Avenue, Warwick, New York, which was registered with the Department as PBS Number 3-461431 (Urda affirmation, Exh. B at unnumbered pages 15-16). A spill was discovered and reported to the Department on October 6, 2015 by an environmental contractor, Groundwater and Environmental Services, Inc., during the course of a Phase II subsurface investigation at the site (Bendell affidavit ¶7, Exh. H). As of January 24, 2019, Alta East, Inc. has failed to investigate or remediate the spill (Bendell affidavit ¶13).

### **DISCUSSION**

Before discussing the merits of Department staff's motion for order without hearing, it is appropriate to first address respondents cross-motions. Respondent requests that the Commissioner either: (1) dismiss this proceeding due to the administrative delay that irreparably prejudiced respondent; or (2) compel the joinder of Sunoco LLC as a necessary party.

#### **Respondent's Cross-Motions**

In his affirmation in support of respondent's cross-motion, respondent's counsel acknowledges that Alta East, Inc. owned or operated the eight gasoline stations at issue in this case at the time the spills were discovered, in September and October 2015. Subsequently, in December 2015, all eight were sold to entities owned and controlled by Sunoco LLC (these subsidiaries include Southside Oil, LLC, MACS Retail, LLC, and Susser Petroleum Operations Company, LLC).

According to counsel, the sale of the gasoline stations effectively ended respondent's business and Alta East, Inc. commenced winding down its remaining corporate affairs. At the date of counsel's papers, he reports that respondent has no revenue stream, no employees, and limited assets. Following the transfer of property, respondent and Sunoco LLC executed a Mutual Global Release Agreement dated August 24, 2018 (Cordisco affirmation, Exh. B).

Counsel states that Department staff did not request the submission of work plans to remediate these spills until December 2015, on the eve of the closings for these sites. He continues that respondent was not provided with a notice of

violation or any stipulations regarding the spills until November 2018, nearly three years after the property was sold, and then only addressed one of the sites, 3103 Route 208, Wallkill, New York (Cordisco affirmation, Exh. A). Upon receipt of this notice of violation, respondent's counsel wrote to Department staff counsel and attached a copy of the Mutual Global Release Agreement (Cordisco affirmation, Exh. C).

#### Respondent's Motion to Dismiss

Respondent's counsel argues that Department staff knew about the spills before the gasoline stations were sold in December 2015 and waited until November 2018 to formally notify respondent of its expectation to assume legal responsibility for them. During this time, Alta East, Inc. was winding down its operations and was not placed on notice that Department staff was going to expect clean up at the sites. Had respondent known of Department staff's intention to have it remediate the sites, it would not have entered into the global release agreement with Sunoco LLC and paid nearly \$900,000.<sup>1</sup> Because of these facts, and that Sunoco LLC, as owner of the sites, is now strictly liable for the cleanup (under the Navigation Law), counsel argues that respondent has suffered significant and irreparable prejudice which warrants this matter being dismissed. Respondent's counsel cites to the State Administrative Procedure Act (SAPA) which requires that an adjudicatory hearing be provided within a reasonable time (SAPA § 301(1)). Counsel concludes that the three-year administrative delay has irreparably prejudiced Alta East, Inc. and the assessment of penalties would be against the interests of justice.

In his affirmation in opposition, Department staff's counsel argues that there are no facts in dispute regarding either respondent's liability for the eight spills or respondent's failure to contain or cleanup the spills. Counsel also argues that there was no administrative delay in this matter, rather Department staff gave respondent every opportunity to either investigate or remediate the spills, beginning on December 1, 2015 when Department staff engineer Bendell directed respondent to submit investigation work plans

---

<sup>1</sup> A dispute regarding this global release agreement exists with respondent claiming that Sunoco LLC has assumed responsibility for the costs of remediating the eight spills and Sunoco LLC (as reported by Department staff) claiming that the release only applies to business liabilities related to credit cards and other accounts payable (Urda affirmation, Exh. E). As discussed later in this report, a Department's administrative enforcement proceeding is not the appropriate venue to hear and resolve this dispute, which properly belongs in State court.

for all the spills, before the properties were transferred. Thus, respondent was informed of its obligation to investigate and cleanup the spills within weeks of the spills being discovered and reported. With respect to the dispute regarding which liabilities the mutual global release agreement covers, Department staff counsel notes that whatever the outcome of this dispute, it does not absolve respondent of liability for the spills under the Navigation Law. Department staff's actions, counsel argues, do not show an unwarranted delay, but rather a typical enforcement process where respondents are first engaged in settlement discussions, provided an opportunity to investigate and remediate a spill without enforcement under a stipulation, and then filing a formal administrative proceeding when voluntary compliance cannot be obtained.

The facts in this record show that after the spills were discovered in September and October 2015 (Bendell affidavit, Exhs. A-H), Department staff met with respondent's environmental contractor on December 1, 2015, some seven weeks later, and directed submission of investigation plans (Bendell affidavit ¶9). This communication put respondent, a sophisticated gasoline station operator, on notice of its obligation to address the spills. Recognizing this obligation, respondent then produced work plans, dated April 5, 2016 and submitted them for review (Bendell affidavit, Exh. I). In an email dated July 26, 2018, Department staff notified respondent's consultant that the workplans could not be approved as submitted and provided direction for revision (Bendell affidavit, Exhs. A-H). Subsequently, a second set of work plans were submitted, dated August 24, 2018, which were identical to the prior, rejected work plans with the addition of site maps (Bendell affidavit ¶11; Exhs. I & J). On November 13, 2018, a conference call occurred with representatives of Department staff, respondent, and Sunoco LLC participating.<sup>2</sup> Then, on November 28, 2018, Department staff sent respondent a notice of violation for the spill at the gasoline station in Wallkill and a proposed stipulation (Cordisco affirmation, Exh. A), which respondent refused to sign (Bendell affidavit ¶12).

Based on these facts, it is clear that respondent knew on December 1, 2015, before it sold the gasoline stations, that Department staff was seeking to have it investigate and

---

<sup>2</sup> The results of this call are not in this record, but two emails are contained in the spill reports. One from Alta East, Inc., dated October 4, 2018 claims that Sunoco LLC has assumed environmental responsibility for the sites. A second from Sunoco LLC, dated November 4, 2018 insists that no such assumption of liability was agreed to. (Bendell affidavit, Exhs. A-H.)

remediate the spills and, thus, counsel's claim to the contrary is without merit. In addition, the submission of proposed work plans in April 2016 and August 2018 show that respondent knew its obligation to investigate and remediate continued. Any problems caused by Alta East, Inc.'s decision to wind down its affairs, knowing of its liability for the spills discovered at the gasoline stations while it owned them, is entirely self-created. Respondent's counsel's claim that it has suffered significant and irreparable prejudice to its defense of this action is not supported by any facts in his affirmation. Likewise, his claim that his client was denied an adjudicatory hearing within a reasonable time is also not supported by this record. His client was negotiating with Department staff and offered an opportunity to enter into a stipulation for one of the sites without penalty in November 2018 and declined. This enforcement proceeding was commenced shortly thereafter in March 2019. Accordingly, the Commissioner should deny the respondent's motion to dismiss.

#### Respondent's Motion to Include Sunoco LLC as a Necessary Party

Respondent's counsel also argues that Sunoco LLC, as the current owner and operator of the eight gasoline stations, is a necessary party to this enforcement proceeding. He bases his argument on the terms of Mutual Global Release Agreement between Sunoco LLC and Alta East, Inc. as well as Sunoco LLC potential liability as owner of the sites. As legal authority for its motion, counsel cites CPLR 1001, which requires the joinder of parties in certain circumstances.

Department staff counsel opposes the joinder of Sunoco LLC in this case as inappropriate. Counsel argues that Sunoco LLC is not the responsible party because the spills were discovered when Alta East, Inc. owned or operated the sites. With respect to any claims Alta East, Inc. may have against Sunoco LLC for the remediation of the sites, Department staff asserts those claims can be explored in a separate court action. Sunoco LLC is not necessary to be brought into this administrative enforcement proceeding and Alta East, Inc. would not be prejudiced by nonjoinder.

Again, the Commissioner should reject respondent's motion. Respondent has not shown that it would be prejudiced by the failure to join Sunoco LLC and the record does not indicate that an effective judgment in this matter cannot be rendered without this proposed third party.

### ***Department Staff's Motion For Order Without Hearing***

In its motion for order without hearing, Department staff requests an order from the Commissioner: (1) finding respondent, Alta East, Inc., liable for sixteen separate counts of two violations; (2) imposing a payable civil penalty of \$160,000; and (3) ordering respondent to fully investigate and remediate the eight petroleum spills that are the subject of this administrative enforcement proceeding.

#### **Liability**

Department staff alleges two causes of action: (1) the illegal discharge of petroleum in violation of Navigation Law (NL) § 173; and (2) the failure to contain the illegal discharge in violation of NL § 176. Each cause of action contains eight counts, one for each of the eight gasoline stations formerly owned or operated by respondent.

#### **First Cause of Action**

Department staff alleges respondent Alta East, Inc. illegally discharged petroleum in violation of NL § 173 at each of the eight gasoline stations it owned or operated. As proof of the violations, Department staff offer the affidavit of R. Daniel Bendell, P.E. the Department's regional spill engineer who stated that these spills were discovered and reported to the Department on various dates throughout September and October, 2015, by an environmental contractor, Groundwater and Environmental Services, Inc. (GES) during the course of a Phase II subsurface investigation at the sites (Bendell affidavit ¶¶5-7; Exhs. A-H; Findings of Fact Nos. 2-9). GES informed Department staff that the investigation was done on behalf of a prospective purchaser of the sites (Bendell affidavit ¶8). On December 1, 2015, Mr. Bendell met with a contractor for respondent and directed that an investigation work plan be submitted for the eight spills (Bendell affidavit ¶9). On April 5, 2016, respondent submitted work plans that did not provide for investigations to properly delineate the extent of the spills and those plans were rejected by the Department (Bendell affidavit ¶10; Exh. I). A second set of proposed work plans were submitted by respondent on August 24, 2018, which were identical to the previously rejected ones, but with the addition

of site maps (Bendell affidavit ¶10; Exh. J). Respondent declined to enter into a stipulation regarding the spills and as of January 24, 2019, respondent had failed to investigate or remediate the spills (Bendell affidavit ¶¶12-13).

In its papers, respondent's counsel argues that a material question of fact exists regarding whether terms of the Mutual Global Release Agreement requires Sunoco LLC to assume responsibility for the spills at the site (a claim Sunoco LLC apparently disputes). While this dispute may exist, it is beyond the jurisdiction of the Department's administrative enforcement process and is not relevant in this case. Respondent does not raise any other alleged issues of fact. Based on the evidence in the record, discussed above, Department staff has shown that respondent is liable for eight counts of a violation of NL § 173.

#### Second Cause of Action

Department staff alleges respondent Alta East, Inc. failed to undertake immediate containment and cleanup of the petroleum discharges in violation of NL § 176 and 17 NYCRR 32.5 at each of the eight gasoline stations it owned or operated. As proof of these violations, Department staff engineer Bendell attaches to his affidavit a copy of the DEC Spill report forms and states that as of January 24, 2019, respondent has failed to investigate or remediate the eight spills (Bendell affidavit ¶13; Exhs. A-H; Findings of Fact No. 2-9).

In its papers, respondent's counsel argues that a material question of fact exists regarding whether terms of the Mutual Global Release Agreement requires Sunoco LLC to assume responsibility for the spills at the site (a claim Sunoco LLC apparently disputes). While this dispute may exist, it is beyond the jurisdiction of the Department's administrative enforcement process and is not relevant in this case. Respondent does not raise any other alleged issues of fact. Based on the evidence in the record, discussed above, Department staff has shown that the respondent is liable for eight counts of a violation of NL § 176 and 17 NYCRR 32.5.

## CIVIL PENALTY

Department staff requests the Commissioner include in his order a payable civil penalty of \$160,000; \$10,000 for each of the 16 counts. In his affirmation, Department staff counsel calculates that the total maximum statutory penalty is in excess of \$483 million, based on the maximum daily penalty per day established in NL § 192 and the amount of time that has elapsed since the violations were first discovered. Counsel argues that the requested penalty is reasonable and consistent with purposes and objectives of the relevant enforcement policies, specifically the Department's Civil Penalty Policy (DEE-1), the Department's Petroleum Spills Enforcement Policy (DEE-4), and the Department's Spills Site Remediation Under Departmental Order Policy (DEE-18).

Counsel notes that DEE-4 states that its primary goal is to provide for a quick response by the discharger to prevent or minimize injury and damage to the public health and the environment (DEE-4 at section III). This document also states that it is the Department's goal to ensure: strict compliance with the Navigation Law and implementing regulations; the swift resolution of environmental problems; deterring future violations by punishing violators; the restoration of natural resources; as well as fair and equitable treatment by the removal of economic benefits of non-compliance (DEE-4 at section IV). In this case, counsel argues that respondent was given multiple opportunities to address the spills without enforcement and without penalty under stipulation; however, respondent refused, avoiding the costs of investigation and cleanup. The gravity of these violations is relatively high because respondent's failure to take timely action has allowed the spills, which have impacted groundwater and soil, to grow, creating a larger environmental problem. Counsel also notes that respondent, an experienced owner and operator of gasoline stations, has known of the spills since 2015 and failed to cooperate with the Department in addressing the violations, only providing inadequate investigation proposals. Under these circumstances, counsel concludes the requested penalty is warranted and consistent with past administrative decisions.

Respondent's counsel argues that Department staff's requested civil penalty amount is inequitable because only one stipulation for one spill was offered and respondent was not on notice of the expectation that it would be required to clean up the spills. Under these circumstances, counsel argues that any civil penalty should relate to the only spill for which a

stipulation was offered and should be calculated as commencing on December 11, 2018, the deadline Department staff provided in the November 2018 notice of violation.

The Commissioner should reject respondent counsel's argument that Department staff's requested penalty amount is inequitable. Respondent knew of its obligations to investigate and cleanup the spills at the site in late 2015, before it decided to sell the properties. Its failure to take action, without the initiation of a formal administrative enforcement proceeding and the imposition of a civil penalty left Department staff no alternative but to commence this proceeding. Based on the facts of the case recited above, the Commissioner should include a requirement that respondent pay a civil penalty of \$160,000 in his order, as requested by Department staff.

#### **INVESTIGATION AND REMEDIATION**

Department staff also requests that the Commissioner include in his order language requiring respondent to fully investigate, clean up and remove the contamination from the subject spills under Department approved work plans. Respondent's counsel argues that it should not be required to do so under the terms of the Mutual Global Release Agreement, which it claims makes Sunoco LLC the responsible party. However, as discussed above, the spills were discovered when respondent owned or operated the properties and, at that time, the obligation to investigate and remediate the spills began. Whatever claim respondent has against Sunoco LLC under the agreement is beyond the scope of this proceeding. Department staff has established that respondent should be required to undertake the investigation and remediation of the sites, and the Commissioner should include such in his order.

#### **CONCLUSION AND RECOMMENDATION**

Based on the evidence in the record and the discussion above, the Commissioner should issue an order that: (1) grants Department staff's motion for order without hearing; (2) denies the cross-motion of Alta East, Inc. to dismiss this administrative enforcement matter; (3) denies respondent's motion to join a third party, Sunoco LLC, as a necessary party to this proceeding; (4) finds respondent liable for the sixteen counts charged in Department staff's motion relating to eight separate petroleum spills; (5) imposes a payable civil penalty of \$160,000; and (6) directs respondent to fully investigate,

clean up, and remove the contamination from the subject spills under work plans approved in advance by Department staff.

/s/

P. Nicholas Garlick  
Administrative Law Judge

Dated: November 22, 2019  
Albany, New York

## Exhibit Chart

Matter of Alta East, Inc.

Attached to the Affirmation of John Urda, Esq.

Exhibit	Description
A	Printout from NYSDOS Division of Corporations
B	Copies of PBS certificates
C	Indemnity Agreement
D	Mutual global release agreement
E	Email chain

Attached to the Affidavit of  
R. Daniel Bendell, P.E.

Exhibit	Description
A	DEC spill report #1506718
B	DEC spill report #1506797
C	DEC spill report #1506798
D	DEC spill report #1507103
E	DEC spill report #1507104
F	DEC spill report #1507105
G	DEC spill report #1507106
H	DEC spill report #1507107
I	Proposed work plans dated April 4, 2016
J	Proposed work plans dated August 24, 2018

**Attached to the Affirmation of Dominic Cordisco, Esq.**

<b>Exhibit</b>	<b>Description</b>
A	November 2018 Notice of Violation
B	Mutual global release agreement
C	Counsel's letter to Department staff