STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 of the Environmental Conservation Law and Article 12 of the Navigation Law and Titles 6 and 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

ORDER

DEC File No.
R2-20110411-125

- by -

BEAVER CREEK REALTY CORP.,

Respondent.

This administrative enforcement proceeding concerns the alleged discharge of petroleum from a petroleum bulk storage (PBS) tank at an apartment building in Manhattan, New York, the alleged failure to contain the discharge, and the alleged failure to register the PBS tank with the New York State Department of Environmental Conservation (Department).

Respondent Beaver Creek Realty Corp. (BCRC) owns a multi-family apartment building at 518 West 136th Street, New York, New York (site). Respondent owns a PBS tank at the site.

In this administrative enforcement proceeding, Department staff alleges that an illegal discharge from the PBS tank occurred on April 6, 2010, and that respondent has failed to remediate the discharge. The petroleum leaked onto the floor at the site and the vapors from the leak affected residences in the apartment building. Upon arriving at the site, Department staff noted staining of the concrete floor adjacent to the tank and on the foundation wall both inside the building near the tank and on the exterior. The discharge of petroleum was assigned DEC spill number 1000191.

Department staff commenced this proceeding against BCRC by service of a motion for order without hearing, in lieu of complaint, dated August 10, 2011, by certified mail. Respondent received the motion on August 11, 2011.

In the motion, which serves as the complaint in this matter, Department staff alleges that respondent:

(1) illegally discharged petroleum at and from the site, in violation of Navigation Law § 173;

(2) failed to immediately undertake containment of the petroleum discharge at the site in violation of Navigation Law § 176 and section 32.5 of title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR);[1]

(3) failed to comply with the terms of the stipulation that respondent entered into with the Department and which became effective on February 25, 2011; and

(4) failed to register or transfer ownership of the PBS facility since acquiring the site on March 19, 2004.

Respondent failed to reply to the motion. Respondent's time to serve a reply expired on August 31, 2011, and it has not been extended by Department staff.

The matter was assigned to Administrative Law Judge (ALJ) Helene G. Goldberger, who prepared the attached summary report. I adopt the ALJ's report as my decision in this matter, subject to the following comments.

I concur with the ALJ's determination that Department staff is entitled to a finding of liability on the four causes of action alleged in its motion.

Department staff requested a civil penalty of eighty-five thousand dollars ($85,000). In addition, Department staff requested an order requiring respondent to fully investigate and remediate the discharge pursuant to a work plan prepared by respondent and approved by the Department, and to register the PBS facility immediately.

In support of the requested civil penalty, Department staff noted the following:

(1) the PBS tank is located in an apartment building in a residential and commercial area;

(2) respondent was given an opportunity to perform the necessary remedial work and failed to do so;

(3) the discharge remains uninvestigated and unremediated; and

(4) respondent was given an opportunity to resolve this matter and failed to do so.

Department staff advised respondent of various remedial activities that need to be undertaken (see, e.g., stipulation dated February 25, 2011; spill report documenting discussions with respondent's principal, Alan Suridis; and letter dated April 8, 2010 from Engineering Geologist Jeffrey Vought to Alan Suridis). These include: tightness testing of tank, submission of a PBS facility application, and delineation of any soil and groundwater contamination at the

[1] Section 32.5 of 17 NYCRR states, in pertinent part, that "(a) [a]ny person responsible for causing a discharge which is prohibited by [Navigation Law § 173] shall take immediate steps to stop any continuation of the discharge and shall take all reasonable containment measures to the extent that he is capable of doing so [and] (b) [t]he person responsible for causing a discharge which is prohibited by [Navigation Law § 173] shall also take those measures or actions necessary for the cleanup and removal of the discharge."

area of concrete staining adjacent to the tank and the foundation wall. Respondent failed to undertake any of these activities despite a signed stipulation with the Department and numerous communications from Department staff.

Based on this record, the civil penalty, the work plan requirement and the remedial activities that Department staff is requesting and the ALJ has recommended, are authorized and appropriate.

To provide appropriate milestones for the completion of the investigation and remediation activities, the work plan is to indicate the dates by which each requirement and task shall be met. I urge respondent, in its preparation of the work plan, to discuss it with Department staff prior to submitting the work plan for review.

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

I. Pursuant to 6 NYCRR 622.12, Department staff's motion for order without hearing is granted.

II. Respondent Beaver Creek Realty Corp. is adjudged to have violated:

(A) Navigation Law § 173 by illegally discharging petroleum at and from the site;

(B) Navigation Law § 176 and 17 NYCRR 32.5, by failing to immediately undertake to contain the discharge or to take those measures necessary for the cleanup of the discharge that occurred at the apartment building at 518 West 136th Street, New York, New York;

(C) the February 25, 2011 stipulation that it entered into with the Department by failing to comply with its requirements; and

(D) ECL 17-1009 and 6 NYCRR 612.2(a) and (b) by failing to register or transfer ownership of the PBS facility after acquiring the site.

III. Respondent Beaver Creek Realty Corp. is assessed a civil penalty in the amount of eighty-five thousand dollars ($85,000). The penalty is due and payable within thirty (30) days of service of this order upon respondent. Payment of the civil penalty shall be by cashier's check, certified check, or money order payable to the order of the "New York State Department of Environmental Conservation," and delivered to the Department at the following address:

John K. Urda, Esq.
Assistant Regional Attorney
NYS DEC, Region 2
One Hunter's Point Plaza
47-40 21st Street
Long Island City, NY 11101

IV. Within thirty (30) days of service of this order upon respondent, respondent Beaver Creek Realty Corp. shall submit to Department staff an approvable work plan that will provide for the delineation of the extent of the discharge both on and off the site, and for its remediation. The work plan shall include, but not be limited to the following:

(A) a subsurface investigation that completely delineates the full extent of fuel oil contamination to soil and groundwater, both inside and outside the apartment building located at 518 West 136th Street, New York, New York;

(B) removal of all petroleum contaminated debris and soil and the collection of endpoint soil samples from the limit of the excavation;

(C) submission of a site plan to Department staff, together with a description of the cause of the petroleum discharge;

(D) submission of any manifests or other documentation relating to the disposal of petroleum-contaminated materials from the cleanup activity; and

(E) a schedule of milestone dates for completion of the tasks set forth in the work plan.

Respondent shall, following Department staff's approval of the work plan, implement the approved work plan in accordance with the milestone dates contained therein.

V. Within thirty (30) days of service of this order upon respondent, Beaver Creek Realty Corp. shall submit a PBS facility registration application to the Department, including all applicable fees.

VI. All communications from respondent to the Department concerning this order shall be directed to John K. Urda, Esq. at the address set forth in paragraph III of this order.

VII. The provisions, terms, and conditions of this order shall bind respondent Beaver Creek Realty Corp., and its agents, successors, and assigns in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Joseph J. Martens
Commissioner

Dated: December 6, 2011
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, NY 12233-1550

In the Matter

- of -

the Alleged Violations of Article 17 of the Environmental Conservation Law, Article 12 of the Navigation Law, and Titles 6 and 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

- by -

BEAVER CREEK REALTY CORP.,
Respondent.

NYSDEC File No. R2-20110411-125

SUMMARY HEARING REPORT

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

Proceedings

New York State Department of Environmental Conservation (DEC or Department) staff is represented by Assistant Regional Attorney John Urda of the Region 2 office. The respondent has not appeared.

On August 10, 2011, DEC staff commenced this enforcement proceeding by serving a notice of motion for order without hearing upon the respondent, Beaver Creek Realty Corp. (BCRC), by certified mail. The "Track & Confirm" information from the United States Postal Service and the copy of the return receipt provided by staff indicate that the motion papers were received by the respondent on August 11, 2011. In its motion for summary order, staff alleges that the respondent, the owner of a residential apartment building at 518 West 136th Street, New York, New York, is in violation of Environmental Conservation Law (ECL) §§ 17-1009 and 71-1929 for failure to register its petroleum bulk storage (PBS) tank with the Department and for failing to comply with the terms of a stipulation it entered into with the Department dated February 25, 2011; Navigation Law (NL) §§ 173, 176 and 192 by discharging petroleum, failing to clean up the spill, and failing to comply with the February 2011 stipulation; §§ 612.2(a), 612.2(b) of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) and § 32.5 of Title 17 of NYCRR for failing to register the PBS tank when ownership of the property changed and failing to clean up the petroleum spill.

The respondent has not replied to staff's motion for order without hearing and the time for a response has passed. On October 20, 2011, the Chief Administrative Law Judge (CALJ) assigned the matter to me and by letter of the same date, CALJ McClymonds informed the parties of this assignment.

In support of staff's motion, Assistant Regional Attorney Urda submitted the following documents:

1) notice of motion for order without hearing dated August 10, 2011
2) affirmation of John K. Urda in support of motion dated August 10, 2011 with the following exhibits:
   A) NYS Department of State Division of Corporations Entity Information for Beaver Creek Realty Corp.
   B) Recording and Endorsement Cover Page with deed and real property transfer report for 518 West 136th Street
   C) NYSDEC Facility Information Report for 518 West 136th Street PBS tank
   D) stipulation dated February 25, 2011 with corrective action plan for Spill No. 1000191
   E) letter dated July 13, 2011 from John K. Urda to Beaver Creek Realty Corp. c/o Alan J. Suridis with Track & Confirm printout from USPS and copy of certified mail receipts

3) affidavit of Raphael Ketani in support of motion dated August 10, 2011 with the following exhibits:
   A) NYSDEC spill report form for 518 W. 136th Street, NY, NY

B) letter dated April 8, 2010 from Jeffrey Vought, DEC Engineering Geologist to Beaver Creek Realty Corp. attn: Alan Suridis
C) letter dated December 6, 2010 from Raphael Ketani, CPG, Engineering Geologist II to Alan Suridis
D) letter dated March 28, 2011 from Mr. Ketani to Mr. Suridis
E) ABC Tank Repair & Lining Inc. proposals dated April 15, 2010
F) Beaver Creek Realty Corp. proposal re: oil spill dated April 11, 2011 from Mr. Suridis to Mr. Ketani.

Staff's Position

Staff alleges that the respondent, the owner of the premises which contains a State-regulated PBS facility – one aboveground fuel oil tank that is at least 1,300 gallons[1] – has failed to register the tank since taking ownership of the building in 2004; failed to adhere to the terms of a February 25, 2011 stipulation that required the respondent to register the tank, tightness test the tank, and submit a remedial investigation work plan to investigate the nature and extent of the contamination caused by the spill; illegally discharged petroleum; and has failed to contain and clean up the spill in violation of the ECL, NL and Titles 6 and 17 of NYCRR.

Mr. Ketani explains in his supporting affidavit the various steps that the Department staff took to attempt to gain compliance by the respondent to no avail.

In his affirmation, Mr. Urda sets forth the staff's rationale for its request of a penalty of $85,000. He explains the serious nature of the allegations particularly due to the tank's location in a residential building and neighborhood and the complete failure of the respondent to take any steps to address the spill.

FINDINGS OF FACT

1. The respondent, BCRC is an active domestic business corporation licensed to do business in New York State and the owner of a six-story residential apartment building at 518 West 136th Street, New York, New York – Block 1988, Lot 121 (building or site). Urda Affirmation (Aff.), ¶¶ 4, 5 and Exhibits (Exs.) A, B annexed to the Urda Aff. BCRC purchased the property on March 12, 2004. Ex. B, Urda Aff.

2. The building contains one State-regulated unregistered PBS fuel oil above-ground tank of at least 1,300 gallons. Urda Aff., Ex. C; Ketani Affidavit (Aff.), Ex. A. On April 6, 2010, New York City Department of Environmental Protection (DEP) personnel reported a petroleum spill at the site which initiated NYSDEC spill number 1000191. Ketani Aff., Ex. A. Department staff investigated the spill and found staining of the concrete floor adjacent to the tank as well as staining of the interior and exterior adjacent walls. An employee of the respondent informed investigators that residences had been affected by petroleum vapors resulting from the spill. Department staff called Alan Suridis, BCRC's principal, to alert him of the spill and the need to perform tightness testing of the tank, to

[1] The spill report that is annexed as Exhibit A to the Ketani affidavit describes the tank as variously 3,000 gallons or 1,300 gallons in size. Exhibit A, pp. 1,2.

submit a PBS registration application immediately, and to perform a soil and groundwater contamination delineation. Ketani Aff., ¶ 6. These requirements were also set forth in a letter to Mr. Suridis dated April 8, 2010. Ketani Aff., Ex. B.

3. BCRC failed to comply with the Department's requirements. Ketani Aff., ¶ 7. In December 2010, still having no response from BCRC, the Department staff sent BCRC another letter requiring the spill investigation and remediation report and facility registration by January 7, 2011. Ketani Aff., ¶ 9 and Ex. C.

4. On January 12, 2011, Mr. Ketani sent BCRC a stipulation to obtain the company's commitment to perform the investigation and remediation giving BCRC until February 9, 2011 to execute the stipulation. Ketani Aff., ¶ 10. On February 9, 2011, Mr. Suridis called Mr. Ketani to advise him that he was signing the stipulation and had retained ABC Tank Repair and Lining to perform the required work. Id.

5. Mr. Suridis executed the stipulation on February 11, 2011 and the Department's Regional Director signed it on February 25, 2011, making it effective as of that date. Urda, Aff., Ex. D. The stipulation requires that BCRC clean up and remove a discharge of petroleum at the site in conformance with the corrective action plan (CAP) annexed to the stipulation. Id. The CAP's first requirement is to submit to DEC for approval (within 15 days of the effective date of the stipulation) a remedial investigation work plan (RIWP) that sets forth the scope of work to investigate the nature and extent of the contamination caused by the spill, both on and off site. Id.

6. BCRC failed to submit the RIWP to DEC and on March 25, 2011, Mr. Ketani left voice mail and e-mail messages for Mr. Suridis notifying him of this violation of the stipulation and giving a deadline of March 28, 2011 for the submission of the RIWP. Ketani Aff., ¶ 13. Mr. Ketani also contacted ABC Tank to see if the contractor had started any work at the site. Id.; Ex. A, pp. 2-3. On March 28, 2011, an ABC Tank employee returned Mr. Ketani's call and advised that though a work proposal had been signed by Mr. Suridis in April 2010, no payment had ever been made and therefore, no work had been done at the site. Ketani Aff., ¶ 14; Ex. A, p. 3.

7. On March 28, 2011, Mr. Suridis contacted Mr. Ketani and advised that he would pay ABC Tank and submit the work plan. Ketani Aff., ¶ 16; Ex. A, p.3.

8. On April 8, 2011, BCRC submitted the April 15, 2010 ABC Tank proposal to DEC as a work plan; however, because it failed to address any subsurface investigation, it was deemed unacceptable by DEC staff. Ketani Aff., ¶ 17; Ex. A, p. 3. ABC Tank informed DEC staff on April 11, 2011 that it still had not been paid to proceed with any work at the site. Ketani Aff., ¶ 18; Ex. A, p. 3.

9. On April 11, 2011, Mr. Ketani informed a BCRC representative that the work plan was unacceptable for failing to include soil and groundwater investigation of the spill. Ketani Aff., ¶ 19. On that same day, BCRC e-mailed a letter from Mr. Suridis that resubmitted the same proposal with the addition of "Perform Sample Soil Borings" and "Water

Testing." Ketani Aff., ¶ 20; Ex. F. Because this submission was deficient in identification of the number and location of the borings and the test methodology, Department staff deemed the proposal unacceptable in an e-mail to BCRC on April 11, 2011.

10. On May 9, 2011 and on June 8, 2011, DEC staff checked in with ABC Tank to determine if any work had proceeded and was advised that because BCRC had still not paid anything to ABC Tank, no work was done. Ketani Aff., ¶ 22; Ex. A, p. 4.

11. Up until at least the date of the staff's motion, August 10, 2011, the respondent had not registered its tank nor taken any action to address the spill. Ketani Aff., ¶ 23.

12. The Department staff commenced this proceeding by this motion for order without hearing dated August 10, 2011 served on the respondent by certified mail on August 11, 2011. The Department staff provided the OHMS copies of the relevant affidavit of service by Regina Seetahal, and the USPS "Track & Confirm" printout and certified mail receipts, both indicating service on the respondent on August 11, 2011.

13. The respondent has not filed a reply to staff's motion.

Discussion

Summary Judgment/Liability

Section 622.12 of 6 NYCRR provides that "[a] contested motion for order without hearing will be granted if, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any part." 622.12(d). "The motion must be denied . . . if any party shows the existence of substantive disputes of facts sufficient to require a hearing." 622.12(e). Summary judgment, under the CPLR, is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to a judgment as a matter of law. CPLR § 3212(b); Friends of Animals v. Association of Fur Mfgrs., 46 NY2d 1065, 1067 (1979).

In this matter, the respondent failed to file a reply to the staff's motion for summary order. Respondent's time to serve a reply expired on August 31, 2011 and has not been extended. 6 NYCRR § 622.12(c).

The Department staff has adequately demonstrated that respondent is liable for violating NL § 173 by discharging petroleum on April 6, 2010; NL § 176 and 17 NYCRR § 32.5 for failing to contain or clean up the spill; failing to comply with the stipulation since March 12, 2011, the date the RIWP was due; and ECL § 17-1009 and 6 NYCRR § 612.2(a) and (b) for failing to register or transfer ownership of the PBS facility since acquiring the site on March 12, 2004. [2] The affirmation and affidavit of Mr. Urda and Mr. Ketani (the engineering geologist assigned to the spill) are complete in their descriptions of the violations and are supported by the

[2] Staff also alleges in this third cause of action that the respondent violated ECL § 71-1929 and NL § 192. However, ECL Article 71 and NL § 192 provide penalties for violations of other chapters of the ECL and the NL, respectively – these provisions do not constitute requirements in and of themselves.

exhibits annexed thereto. The respondent has completely failed to provide any defense to the allegations and therefore, no facts – material or otherwise – have been put forward to defeat staff's motion. It is appropriate for the Commissioner to issue an order finding the respondent liable for all four causes of action cited in staff's motion.

Penalty

Department staff requested a civil penalty of $85,000 as well as an order requiring the respondent to properly investigate, clean up and remove the contamination related to the spill pursuant to a Department-approved work plan and to register the PBS facility immediately and pay all applicable fees. In support of the requested civil penalty, the staff noted that the tank and spill (like the facts in Matter of Cherokee Partners, [Commissioner's Order March 2, 2011]), were located in a sensitive area – residential and commercial; the respondent was given ample opportunity to address the spill and failed to do so; the discharge remains uninvestigated and unremediated; and the respondent was given several opportunities via a stipulation and a proposed consent order to resolve this matter and failed to do so.

The Department staff has further explained the rationale for the penalty by calculating the minimum number of days the violations have continued multiplied by the penalties set forth in the applicable statutes. Urda Aff., ¶¶ 25 – 34. The $85,000 penalty proposed by staff is a small fraction of the maximum total based upon these calculations.[3] Staff proposes a $25,000 penalty for the discharge; a penalty of $37,500 for violation of the stipulation; a penalty of $25,000 for failure to remediate the spill; and a penalty of $10,000 for failure to register the tank. In further support of the proposed penalty, Mr. Urda refers to the Department's Civil Penalty Policy (DEE-1), Order on Consent Enforcement Policy (DEE-2), Bulk Storage and Spill Response Enforcement Policy (DEE-4) and Spill Site Remediation under Departmental Order Enforcement Policy (DEE-18). Urda Aff., ¶ 36. He stresses the importance of dischargers responding quickly to spills in order to minimize injury and damage to the public health and environment citing to DEE-4 at III; DEE-18 at I. As he notes also, the Department through its Civil Penalty Policy seeks to i) bring sites into strict compliance; ii) punish violators; iii) remove economic gain; and iv) deter future noncompliance. DEE-1 at III. Urda Aff., ¶ 38.

The Civil Penalty Policy directs staff to take into consideration several factors in devising penalties, particularly the gravity of the violation and the economic benefits to the respondent derived from noncompliance. In this matter, although the environmental impact has not been fully investigated, the site, as noted above, is contained within a residential building and neighborhood. Residents of the building were affected by the vapors emanating from the spill. Moreover, the respondent's failure to register the tank undermines a critical aspect of the Department's PBS program's ability to track these facilities and is a very serious violation. The respondent's failure to adhere to the terms of the stipulation – an important means by which

[3] With respect to the second cause of action, staff's calculation of 872 days is in error because the spill report was April 6, 2010 not March 16, 2009. The correct number of days is 492 days and the maximum penalty would be $12,300,000.00. In staff's third cause of action, it is stated that the violations run from March 12, 2010 – the date the RIWP was due – until the day of the motion. This is in error, the RIWP was due March 12, 2011 (the stipulation was executed on February 25, 2011).

Department staff resolve these types of violations - is also serious as this noncompliance has further delayed a cleanup of the spill that may result in further environmental degradation.

Staff does not offer any quantitative analysis of the economic benefit that the respondent has obtained by its noncompliance but by not registering the tank and by failing to conduct any investigation of the spill or remediation, BCRC has saved those funds which can be very substantial.

The factors that are taken into consideration under the Department's Civil Penalty Policy to adjust the penalty are: a) culpability, b) violator cooperation, c) history of non-compliance, d) ability to pay, and e) unique factors. With respect to culpability, the respondent's failure to register the fuel tank with the Department set the stage for further violations related to the PBS program and ultimately, the spill which may have been avoided if tightness testing had been performed. The respondent has shown no cooperation to resolve these violations but instead has repeatedly made promises to comply that have been unfulfilled. The staff has not provided any information of a history of non-compliance that precedes the allegations in this motion. With respect to ability to pay, neither party has provided any information.[4] I have found no unique factors in this matter to consider with respect to penalty formulation.

I agree with staff that the recommended penalty of $85,000 is well within the range of penalties assessed for similar violations. See, Urda Aff., ¶ 50.

Conclusions of Law

From the foregoing Findings of Fact and the discussion above, the following conclusions of law are established for the purposes of this motion:

1. There are no material issues of fact and staff's motion for summary order should be granted in its entirety.

2. On April 6, 2010, the respondent violated NL § 173 by allowing the discharge of petroleum from its PBS tank located at 518 West 136th Street, NY, NY.

3. Since at least April 6, 2010, the respondent has violated NL § 176 and 17 NYCRR § 32.5 for failure to contain or clean up the spill.[5]

4. Since at least March 12, 2011, the respondent has violated the terms of the stipulation executed by the Region 2 Regional Director on February 25, 2011.

5. Since March 19, 2004, the respondent has violated ECL § 17-1009 and 6 NYCRR

[4] A cursory internet search of BCRC reveals that a petition for Chapter 11 bankruptcy was filed in August 2010. This petition does not include any information regarding the oil spill. In In re Gollnitz, 09-14047B (Western District of NY, Judge Carl L. Bucki), the court found that the bankrupt former owner of a gasoline station could not use the bankruptcy laws to evade responsibility for an environmental obligation. http://www.newyorklawjournal.com/PubArticleFriendlyNY.jsp?id=1202518268346.

[5] Department staff cited to March 16, 2009 as the date of the spill report but that is in error. Ex. A, Ketani Aff.

§§ 612.2(a) and (b) by failing to register or transfer ownership of the PBS facility when it acquired the site.

6. ECL § 71-1929 provides that a person who violates any of the provisions of titles 1 through 11 and title 19 of Article 17, or the rules, regulations, order or determinations of the commissioner promulgated thereto shall be liable for a penalty not to exceed thirty-seven thousand five hundred dollars per day for each violation, and in addition, be enjoined from continuing such violation. NL § 192 provides that any person who violates any of the provisions of this article or any rule promulgated thereunder or who fails to comply with any duty created by this article shall be liable to a penalty of not more than twenty-five thousand dollars for each offense in a court of competent jurisdiction. If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate and distinct offense. Thus, the penalty of $85,000 as well as the injunctive relief requested by staff are well within amounts set by the relevant statutory provisions.

Ruling and Recommendation

Based upon the foregoing, the staff's motion for summary order is granted and I recommend that the staff's request for relief should be granted in its entirety. Accordingly, I recommend a penalty of $85,000 should be assessed and the respondent should be ordered to: a) register the tank and pay any applicable fees within thirty days of the Commissioner's Order; b) submit an approvable RIWP to the Department staff within thirty days of the Commissioner's Order; c) carry out the approved RIWP to clean up and remove the subject contamination under a timetable developed by staff.

Dated: Albany, New York
October 28, 2011