

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Article 17 of the
Environmental Conservation Law
of the State of New York, and Parts 613
and 754 of Title 6 of the
Official Compilation of Codes,
Rules and Regulations of the
State of New York

by

MOUNTAINSTOP, INC.
Respondent.

ORDER

Case No. R6-20010118-02

WHEREAS:

1. The attached report submitted by Administrative Law Judge (“ALJ”) Maria E. Villa, with respect to the motion by staff of the New York State Department of Environmental Conservation (the “Department”) for an order without hearing, is adopted as my decision in this matter. Section 622.12(d) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“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 [Civil Practice Law and Rules] in favor of any party.”

2. Department staff’s motion seeking an order without hearing as against respondent MOUNTAINSTOP, INC. (“respondent”) for violations of article 17 (Water Pollution Control) of the New York State Environmental Conservation Law (“ECL”), and parts 613 and 754 of 6 NYCRR, should be granted.

3. In determining the appropriate relief for the violations that were established, the facts of this case as determined in the ALJ’s report have been taken into account.

NOW, THEREFORE, having considered this matter, it is ORDERED that:

- I. Department staff’s motion for an order without hearing is granted.

- II. Respondent MOUNTAINSTOP, INC. is found to have violated ECL article 17 and parts 613 and 754 of 6 NYCRR, in that, from June 6, 1988 to December 31, 2001, respondent owned a petroleum bulk storage facility on Route 28, Old Forge, Herkimer County, New York (the “Facility”), and:
- (A) failed to color code the fill ports on Tank #002 and Tank #005, in violation of Section 613.3(b)(1);
 - (B) failed to monitor the cathodic protection of Tank #005 and its associated piping, in violation of Section 613.5(b)(2);
 - (C) failed to perform leak detection monitoring on Tank #005 and its associated piping, in violation of Section 613.5(b)(3);
 - (D) failed to maintain monitoring records on the premises for a period of at least one year, in violation of Section 613.5(b)(4);
 - (E) failed to retest Tank #001 and Tank #002 no later than five years from the date of the previous test, in violation of Section 613.5(a)(1)(iv);
 - (F) discharged petroleum at a level in excess of that identified and authorized by respondent’s State Pollutant Discharge Elimination System (“SPDES”) permit (NY-023587), in violation of Section 754.4(b); and
 - (G) failed to sample, monitor and report as per the requirements of respondent’s SPDES permit NY-023587, in violation of Section 754.4(k).
- III. For the violations set forth in Paragraph II of this order, respondent is assessed a civil penalty of one hundred fifty thousand dollars (\$150,000). Payment of the penalty shall be made by certified check, cashier’s check, or money order, payable to “NYSDEC,” and mailed to the address set forth in Paragraph IV within thirty days of service of this order upon respondent.
- IV. All communications between respondent and the Department concerning this order shall be made to the Department’s Region 6 Director, Dulles State Office Building, 317 Washington Street, Watertown, New York 13601-3787.
- V. The provisions, terms and conditions of this order shall bind respondent, its officers, directors, agents, servants, employees, successors and assigns and all persons, firms, and corporations acting for or on behalf of respondent.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of
Article 17 of the Environmental Conservation
Law of the State of New York (ECL), and
Title 6 of the Official Compilation of Codes,
Rules and Regulations of the State of New York
(6 NYCRR) Parts 613 and 754 by

Report Concerning Motion for
Order without Hearing

DEC Case No. R6-20010118-02

MOUNTAINSTOP, INC.,
Respondent.

September 26, 2003

PROCEEDINGS

The Staff of the New York State Department of Environmental Conservation (“Department Staff”) moved for an order without hearing against Respondent, MOUNTAINSTOP, INC. (“MOUNTAINSTOP” or “Respondent”). Department Staff’s motion was dated August 18, 2003, and served upon Dr. Donald Ross, the President of MOUNTAINSTOP, by certified mail, return receipt requested. The return receipt indicates that the mailing was signed for on August 22, 2003.

The motion asserted that Respondent is in violation of Article 17 of the Environmental Conservation Law (“ECL”) and Parts 613 and 754 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”).¹ According to the motion, from June 6, 1988 to December 31, 2001, Respondent owned a convenience store located at Route 28, Old Forge, Herkimer County, New York (the “Facility”), with petroleum bulk storage capacity in excess of 1,100 gallons. Department Staff’s motion alleged that Respondent:

- (H) failed to color code Tank #002 and Tank #005, in violation of Section 613.3(b)(1);
- (I) failed to monitor the cathodic protection of Tank #005 and its associated piping, in violation of Section 613.5(b)(2);
- (J) failed to perform leak detection monitoring on Tank #005 and its associated piping, in violation of Section 613.5(b)(3);

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The motion includes a Notice of Motion for Order Without Hearing, as well as a document entitled “Motion for Order Without Hearing.” In both of these documents, the caption refers to violations of Parts 613 and 754, while the text refers to Part 612, or specifically to Part 612.2(a)(2), and alleges that Respondent failed to renew its petroleum bulk storage registration. Nevertheless, the Affidavits submitted, as well as the Memorandum in Support, detail the alleged violations of Parts 613 and 754. The motion indicates that these documents were served upon Respondent (see Affidavit of Ardis Siefried, sworn to September 2, 2003). This is sufficient to place Respondent on notice of the alleged violations.

- (K) failed to maintain monitoring records on the premises for a period of at least one year, in violation of Section 613.5(b)(4);
- (L) failed to retest Tank #001 and Tank #002 no later than five years from the date of the previous test, in violation of Section 613.5(a)(1)(iv);
- (M) discharged petroleum at a level in excess of that identified and authorized by Respondent's State Pollutant Discharge Elimination ("SPDES") permit (NY-023587), in violation of Section 754.4(b); and
- (N) failed to sample, monitor and report as per the requirements of Respondent's SPDES permit NY-023587, in violation of Section 754.4(k).

Department Staff maintained that no material issue of fact exists and that the Department is entitled to judgment as a matter of law for the violations alleged. The motion sought an order from the Commissioner finding Respondent in violation, assessing a civil penalty of \$150,000, and reserving Department Staff's right to take further action for any matters not specifically alleged in the motion.

Department Staff's motion was made pursuant to 6 NYCRR Section 622.12(a), which provides that "[i]n lieu of or in addition to a notice of hearing and complaint, the department staff may serve, in the same manner, a motion for order without hearing together with supporting affidavits reciting all the material facts and other available documentary evidence." Affidavits accompanying the motion were filed by Region 6 Environmental Engineers I Donald I. Johnson and Chad Kehoe, and by Region 6 Environmental Engineering Technician II David F. Pickett.

As of the date of this report, no response to the motion had been received.

POSITIONS OF THE PARTIES

Department Staff's motion stated that Respondent submitted a petroleum bulk storage ("PBS") registration application on June 6, 1988. Exhibit A; Affidavit of Donald I. Johnson ("Johnson Affidavit") at ¶ 3. The Department issued a PBS Registration Certificate No. 450243 on July 28, 1988, with an expiration date of July 28, 1993. Exhibit B; Johnson Affidavit, at ¶ 3. According to Department Staff, the Facility originally consisted of five steel petroleum bulk storage tanks: Tank No. 001 (4,000 gallons); Tank No. 002 (4,000 gallons); Tank No. 003 (1,000 gallons); Tank No. 004 (550 gallons); and Tank No. 005 (6,000 gallons). Tanks 001 through 004 were bare steel, and Tank No. 005 was steel with cathodic protection. Exhibits A and B.

Respondent's application requested that the Facility's registration be modified to reflect the closure and removal of Tank Nos. 003 and 004. Johnson Affidavit at ¶ 3. The Department issued a PBS registration certificate on October 14, 1988, with an expiration date of July 28, 1993, listing Tanks 001, 002 and 005. Johnson Affidavit at ¶ 4; Exhibit C.

On April 29, 1993, Respondent submitted an application for renewal and closure/removal of Tank No. 001. Johnson Affidavit at ¶ 5; Exhibit D. On May 24, 1993, the Department issued PBS Registration Certificate No. 450243, with an expiration date of July 28, 1998, for Tank Nos. 001, 002 and 005. Johnson Affidavit at ¶ 5; Exhibit E. After Tank No. 001 was removed, the Department issued a PBS Registration Certificate on November 29, 1993, with an expiration date of July 28, 1998. Johnson Affidavit at ¶ 6; Exhibit F. That certificate listed Tank Nos. 002 and 005. Id. Tank 002 was tightness tested in June 1988, and was required to be tested by June 30, 1993. Johnson Affidavit at ¶ 6. Respondent tested the tank in March 1994, and on April 11, 1994, the Department issued a PBS Registration Certificate with an expiration date of July 28, 1998. Johnson Affidavit at ¶ 7; Exhibit G.

Tank No. 002 was due for tightness testing in June of 1998. Johnson Affidavit at ¶ 7. On September 8, 1998, Respondent submitted a renewal application to the Department, and a Registration Certificate was issued on September 17, 1998, with an expiration date of July 28, 2003. Johnson Affidavit at ¶¶ 7, 8; Exhibits H and I. By letter dated January 3, 2002, Respondent notified the Department that the Facility had been sold to PCF, Inc. on or about December 31, 2001. Johnson Affidavit at ¶ 9; Exhibit J.

According to the Johnson Affidavit, three petroleum spills occurred at the Facility during the relevant period. Johnson Affidavit at ¶ 10; Exhibits K(1) through (3). Respondent did not report the first spill, which was discovered in November 1989 during a site assessment at the property. Johnson Affidavit at ¶ 10. In 1994, Respondent installed a recovery system to remediate this spill in connection with a second incident in October 1992, when Respondent discovered that Tank No. 001 was taking on water, which is an indication of a leak. Id. Respondent did not remove Tank No. 001 until October 1993, and did not perform the required testing that was due by June 30, 1993. Id. The spill was remediated under the same spill number as the earlier spill. Id.

The Johnson Affidavit states that on October 17, 1995, Respondent discovered that Tank No. 002 was taking on water. Id. Respondent reported the spill on October 27, 1995, and temporarily closed the tank, but did not test, repair, or remove the tank. Id. Following the sale of the Facility to PCF, Inc., a Department remediation contractor removed Tank Nos. 002 and 005, excavated contaminated soil, and is monitoring the site to determine if further action is necessary. Id.

The Johnson Affidavit states further that the Department inspected the Facility on August 30, 1995, and observed a number of violations. Johnson Affidavit at ¶ 11. By letter dated September 7, 1995, Department Staff sent a copy of the inspection report to Respondent. Id.; Exhibit L. The violations included improper color coding of Tank Nos. 002 and 005, and improper labeling and failure to provide cathodic monitoring protection and leak detection records for Tank No. 005. Id. On February 27, 1996, Department Staff sent a reminder letter to Respondent concerning the violations, but no response was ever received. Johnson Affidavit at ¶ 11; Exhibit M.

Tightness testing on Tank No. 002 was required by June 30, 1998. Johnson Affidavit at ¶ 12; Exhibit I. On September 28, 1998, Department Staff sent a reminder letter to Respondent, but

no test results were ever received. Johnson Affidavit at ¶ 12; Exhibit N. According to the Johnson Affidavit, the cost of tightness testing is approximately \$500 per tank. Johnson Affidavit at ¶ 13.

The Affidavit of David F. Pickett (the “Pickett Affidavit”) states that during an inspection on August 30, 1995, a number of violations were noted. Pickett Affidavit at ¶ 5; Exhibit L. The Pickett Affidavit indicates that Tank Nos. 002 and 005 were not properly color coded, that Tank No. 002 was improperly labeled, and that there were no cathodic protection monitoring or leak detection records available for that tank.² *Id.* Exhibit M to the motion is a letter dated February 27, 1996 from Mr. Pickett to Respondent, detailing the violations and demanding corrective action. According to the Pickett Affidavit, no response to the letter was received. Pickett Affidavit at ¶ 6.

The Affidavit of Chad Kehoe (the “Kehoe Affidavit”) states that on December 23, 1991, the Department issued SPDES permit number NY-0235857 (the “Permit”) to Respondent. Kehoe Affidavit at ¶ 3; Exhibit O. The permit was effective from February 1, 1992 to February 1, 1997, and was renewed on December 11, 1996 with an expiration date of February 1, 2002. Kehoe Affidavit at ¶ 3. The SPDES permit was issued in connection with Respondent’s installation of a groundwater treatment system, or recovery system, to remove petroleum contamination from the soil at the Facility. Kehoe Affidavit at ¶ 4. The recovery system began operating in May of 1994, and according to the Kehoe Affidavit, Respondent violated the provisions of the Permit by discharging pollutants at a level in excess of that authorized by the Permit, and by failing to sample, monitor and report as required by the Permit. *Id.*

The Kehoe Affidavit specifies the discharge limits for the recovery system, and indicates that the monthly sampling reports and monthly operation logs submitted to the Department since May 1994 report flow data but not sample collection for 22 months. Kehoe Affidavit at ¶¶ 5 and 7. According to the Kehoe Affidavit, Respondent violated the Permit’s effluent discharge limits on 103 occasions from May 1994 to January 2001, and violated sampling and monitoring requirements on 22 occasions during that period. Kehoe Affidavit at ¶ 8. The Kehoe Affidavit states that the cost of an effluent sampling event at the Facility is approximately \$90, and that the Region generally seeks a minimum gravity penalty of \$1,000 per parameter for a violation of toxic effluent limitations, or for failure to sample toxic parameters. Kehoe Affidavit at ¶¶ 9 and 10.

The memorandum in support of the motion, submitted by Regional Attorney James T. King, Esq., indicates that a review of Respondent’s file revealed a copy of a proposed order on consent that was sent to Respondent on January 4, 2002. No response was received. Memorandum in Support, at p. 3.

Department Staff requested a civil penalty of \$150,000 for the violations alleged. According to Department Staff, Respondent avoided the costs of at 22 sampling events, at \$90 per sampling, for a total of \$1,980. Department Staff’s motion indicated further that Respondent avoided the costs

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The Affidavit refers to Tank No. 002, but the inspection report (Exhibit L) indicates that the labeling and cathodic protection and leak detection monitoring record keeping violations were associated with Tank No. 005.

of tightness testing Tank No. 002, for an economic benefit of \$500. Total avoided costs, according to the motion, amount to \$2,480.

In addition, the motion provides the basis for a gravity component of \$42,800 for violations of 6 NYCRR Part 613, as well as \$323,000 for violations of Part 754. The memorandum in support of the motion, as well as the Johnson Affidavit, provide a detailed breakdown of both of those figures by violation, tank number, and regulatory provision, based upon the Department's program policy. The total penalty, taking into account the economic benefit and gravity components, would amount to \$368,280. According to Department Staff, Respondent failed to respond to numerous notifications of violations, and had no intention of ensuring that the Facility would be cleaned up following the sale to PCF. Based upon this analysis, the Department requested a total civil penalty of \$150,000.

Respondent did not make any submission in opposition to the motion.

DISCUSSION

Motion for Order without Hearing

Department Staff requested an order without hearing against Respondent pursuant to 6 NYCRR Section 622.12. That provision is governed by the same principles applicable to summary judgment, pursuant to New York Civil Practice Law and Rules 3212. Section 622.12(d) provides that a contested motion for an 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 party. Section 3212(b) of the CPLR provides, in relevant part, that a motion for summary judgment shall be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party."

Part 613 of 6 NYCRR applies, in pertinent part, to all underground petroleum storage facilities with a combined storage capacity of over 1,100 gallons. Section 613.1(b). Section 613.5(a)(1) specifically provides that "[t]he owner of any underground petroleum storage tank and connecting piping system must have the tank and pipes periodically tested for tightness as shown in Table 1 of this subdivision." Section 613.5(a)(1)(iv) requires that retesting of all tank and piping systems must be completed no later than every five years from the date of the previous test. Department Staff's motion states that Respondent did not comply with this provision.

Section 613.3(b)(1) requires that fill ports be color coded to identify the product inside the tank. Department Staff alleges in its motion that Respondent failed to color code Tank Nos. 002 and 005. Section 613.5(b)(2) requires at least annual monitoring of the adequacy of a cathodic protection system. Department Staff's motion states that Respondent was unable to produce any records of cathodic protection monitoring.

In addition, Department Staff contends that Respondent failed to perform leak detection monitoring on Tank No. 005, and its associated piping, in violation of Section 613.5(b)(3). In addition, according to Department Staff, Respondent failed to maintain monitoring records on the premises for a period of at least one year, in violation of Section 613.5(b)(4). Finally, Department Staff's motion alleges that Respondent violated Section 754.5(b) by discharging pollutants at a level in excess of that identified and authorized by Respondent's SPDES permit, and violated the provisions of Section 754.4(k) by failing to sample, monitor, and report in accordance with permit requirements.

In this case, there are no disputed facts, because Respondent has not responded to Department Staff's motion for order without hearing. Department Staff's allegations, and the proof provided in support of those allegations, establish the cause of action sufficient to warrant granting the motion.

Pursuant to the provisions of ECL Section 71-1929 that were in effect at the time of the violations alleged in the motion, any violation of Titles 1 through 11, or Title 19, of Article 17 or its implementing regulations subjects the violator to a penalty not to exceed \$25,000 per day. Although Section 71-1929 was amended effective May 15, 2003, increasing the maximum penalty to \$37,500 per day, the penalty calculation in Department Staff's motion is based upon the earlier, \$25,000 daily maximum. The statutory penalty amounts in force at the time the violations occurred are applicable in this case. In any event, Department Staff's motion does not seek the imposition of the maximum penalty.

The penalty sought by Department Staff (\$150,000) is appropriate, given the nature and circumstances of the violation, as described above. Therefore, I recommend that Department Staff's motion for an order without hearing be granted, and that the Commissioner find that Respondent violated ECL Article 17, and 6 NYCRR Parts 613 and 754, and that the penalty requested by Department Staff be imposed.

FINDINGS OF FACT

The facts determined as a matter of law are as follows:

1. From June 6, 1988 to December 31, 2001, Respondent owned a petroleum bulk storage facility at Route 28, Old Forge, Herkimer County, New York (the Facility). Respondent sold the Facility to PCF, Inc. on or about December 31, 2001.
2. The Facility originally consisted of five steel petroleum bulk storage tanks: Tank No. 001 (4,000 gallons leaded gasoline); Tank No. 002 (4,000 gallons unleaded gasoline); Tank No. 003 (1,000 gallons unleaded gasoline); Tank No. 004 (550 gallons kerosene); and Tank No. 005 (6,000 gallons unleaded gasoline). Tanks 001 through 004 were bare steel, and Tank No. 005 was steel with cathodic protection.

3. The Department issued a PBS registration certificate on October 14, 1988, with an expiration date of July 28, 1993, listing Tanks 001, 002 and 005.
4. Respondent closed Tank No. 003 and Tank No. 004 by removal during October 1988, and Tank No. 001 by removal during November 1993.
5. On April 29, 1993, Respondent submitted an application for renewal and closure/removal of Tank No. 001. On May 24, 1993, the Department issued PBS Registration Certificate No. 450243, with an expiration date of July 28, 1998, for Tank Nos. 001, 002 and 005. After Tank No. 001 was removed, the Department issued a PBS Registration Certificate on November 29, 1993, with an expiration date of July 28, 1998. That certificate listed Tank Nos. 002 and 005.
6. Tank No. 002 was tightness tested in June 1988, and was required to be tested by June 30, 1993. Respondent tested the tank in March 1994, and on April 11, 1994, the Department issued a PBS Registration Certificate with an expiration date of July 28, 1998.
7. Tank No. 002 was due for tightness testing in June of 1998. On September 8, 1998, Respondent submitted a renewal application to the Department, and a Registration Certificate was issued on September 17, 1998, with an expiration date of July 28, 2003.
8. By letter dated January 3, 2002, Respondent notified the Department that the Facility had been sold to PCF, Inc. on or about December 31, 2001.
9. Three petroleum spills occurred at the Facility during the relevant period. Respondent did not report the first spill, which was discovered in November 1989 during a site assessment at the property.
10. In 1994, Respondent installed a recovery system to remediate this spill in connection with a second incident in October 1992, when Respondent discovered that Tank No. 001 was taking on water, which is an indication of a leak. Respondent did not remove Tank No. 001 until October 1993, and did not perform the required testing that was due by June 30, 1993. The spill was remediated under the same spill number as the earlier spill.
11. On October 17, 1995, Respondent discovered that Tank No. 002 was taking on water. Respondent reported the spill on October 27, 1995, and temporarily closed the tank, but did not test, repair, or remove the tank. Following the sale of the Facility to PCF, Inc., a Department remediation contractor removed Tank Nos. 002 and 005, and excavated contaminated soil. The contractor is monitoring the site to determine if further action is necessary.
12. The Department inspected the Facility on August 30, 1995, and observed a number of violations. By letter dated September 7, 1995, Department Staff sent a copy of the inspection report to Respondent. The violations included improper color coding of Tank

- Nos. 002 and 005, and improper labeling and failure to provide cathodic monitoring protection and leak detection records for Tank No. 005. On February 27, 1996, Department Staff sent a reminder letter to Respondent concerning the violations, but no response was ever received.
13. Tightness testing on Tank No. 002 was required by June 30, 1998. On September 28, 1998, Department Staff sent a reminder letter to Respondent, but no test results were ever received.
 14. The cost of tightness testing is approximately \$500 per tank.
 15. During an inspection on August 30, 1995, a number of violations were noted. Specifically, the fill ports on Tank Nos. 002 and 005 were not properly color coded, Tank No. 005 was improperly labeled, and there were no cathodic protection monitoring or leak detection records available for that tank. Department Staff sent a letter dated February 27, 1996 to Respondent, detailing the violations and demanding corrective action. No response to the letter was received.
 16. On December 23, 1991, the Department issued SPDES permit number NY-0235857 (the "Permit") to Respondent. The permit was effective from February 1, 1992 to February 1, 1997, and was renewed on December 11, 1996 with an expiration date of February 1, 2002.
 17. Respondent installed a groundwater treatment system, or recovery system, to remove petroleum contamination from the soil at the Facility. The recovery system began operating in May of 1994, and Respondent violated the provisions of the Permit by discharging pollutants at a level in excess of that authorized by the Permit, and by failing to sample, monitor and report as required by the Permit.
 18. The monthly sampling reports and monthly operation logs submitted to the Department since May 1994 report flow data but not sample collection for 22 months. Respondent violated the Permit's effluent discharge limits on 103 occasions from May 1994 to January 2001, and violated sampling and monitoring requirements on 22 occasions during that period.
 19. The cost of an effluent sampling event at the Facility is approximately \$90, and the Region generally seeks a minimum gravity penalty of \$1,000 per parameter for a violation of toxic effluent limitations, or for failure to sample toxic parameters.
 20. A proposed order on consent was sent to Respondent on January 4, 2002. No response was received.
 21. No submission in response to Department Staff's motion for order without hearing has been received.

CONCLUSIONS

1. Respondent violated Section 613.3(b)(1) by failing to color code the fill ports on Tank #002 and Tank #005.
2. Respondent violated Section 613.5(b)(2) by failing to monitor the cathodic protection of Tank #005 and its associated piping.
3. Respondent violated Section 613.5(b)(3) by failing to perform leak detection monitoring on Tank #005 and its associated piping.
4. Respondent violated Section 613.5(b)(4) by failing to maintain monitoring records on the premises for a period of at least one year.
5. Respondent violated Section 613.5(a)(1)(iv) by failing to retest Tank No. 001 and Tank No. 002 no later than five years from the date of the previous test.
6. Respondent violated Section 754.4(b) by discharging petroleum at a level in excess of that identified and authorized by Respondent's State Pollutant Discharge Elimination permit number 023587 ("SPDES Permit").
7. Respondent violated Section 754.4(k) by failing to sample, monitor and report as per the requirements of Respondent's SPDES Permit.
8. The civil penalty requested by Department Staff is authorized, pursuant to ECL 71-1929, which provided for a penalty of up to \$25,000 per violation per day at the time the violations occurred.

RECOMMENDATION

I recommend that the Commissioner grant the relief requested by Department Staff in its motion for order without hearing, specifically, the imposition of a \$150,000 penalty for violations of ECL Article 17 and Parts 613 and 754 of 6 NYCRR.

_____/s/_____
Maria E. Villa
Administrative Law Judge
NYS Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway, First Floor
Albany, New York 12233-1550

Dated: Albany, New York
September 26, 2003

To: (VIA CERTIFIED MAIL)

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