STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Article 71 of the Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

ORDER

DEC Case No. 3-179108

- by -

MANJIT RAJU,

Respondent.

Respondent Manjit Raju is the owner of two petroleum bulk storage ("PBS") facilities. The facilities are located at 1135 Route 9D, Garrison, New York ("Garrison facility"), with a PBS number of 3-601291, and at Route 17 East, Parksville, New York ("Parksville facility"), with a PBS number of 3-179108.

Respondent entered into consent orders with the New York State Department of Environmental Conservation ("Department" or "DEC") to address violations of the Navigation Law, article 17 of the Environmental Conservation Law ("ECL"), and parts 612 and 613 of title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR"), relating to the PBS tanks at the two facilities. The consent orders included:

- DEC Order on Consent, Case No. 3-179108, which was signed by respondent on February 22, 2002 and by the Department on February 26, 2002 ("2002 Consent Order"). The 2002 Consent Order, which addressed violations at both the Garrison and the Parksville facilities, set forth a compliance schedule, established spill investigation and remediation requirements, and assessed a civil penalty of ten thousand dollars ($10,000). Department records indicate that respondent paid the civil penalty assessed by the 2002 Consent Order;

- DEC Consent Order, Case No. 3-179108, which was signed by respondent on January 27, 2006 and by the Department on February 21, 2006 ("first 2006 Consent Order"). The first 2006 Consent Order, which addressed both the Garrison and the Parksville facilities, stated that respondent "failed to comply" with the 2002 Consent Order and assessed a penalty of twenty thousand dollars ($20,000);[1] and

- DEC Order on Consent, Case No. 3-601291**,** which was signed by Baldev Raju on behalf of Manjit Raju on January 30, 2006 and by the Department on February 21, 2006

[1] In addition, the first 2006 Consent Order required respondent to reimburse the Department for any bill that the Department incurred for the investigation and remediation of petroleum contamination "at the site," but the consent order did not specify which site (see first 2006 Consent Order, at II).

("second 2006 Consent Order"). The second 2006 Consent Order addressed violations at the Garrison facility only. It set forth a compliance schedule, and imposed a civil penalty of ten thousand dollars ($10,000) which was suspended, contingent upon respondent's compliance with the terms of the second 2006 Consent Order.[2]

Department staff commenced this administrative enforcement proceeding against respondent by service of a notice of hearing and complaint dated November 21, 2007. Department staff alleged that respondent had failed to comply with the penalty payment schedule in the first 2006 Consent Order. As noted, the first 2006 Consent Order imposed a civil penalty of twenty-thousand dollars ($20,000) for respondent's failure to comply with the 2002 Consent Order.[3] Pursuant to the terms of the first 2006 Consent Order, respondent was to pay the civil penalty of twenty thousand dollars ($20,000) in installments from February 2006 to May 2009. Respondent, however, paid only one thousand dollars ($1,000) during that period.

Department staff in its complaint requested that a civil penalty "in the amount of Forty Thousand (420,000 [sic]) Dollars" be assessed against respondent (see Complaint dated November 21, 2007, at II). In an amended complaint dated December 10, 2007, Department staff requested a penalty of fifty thousand dollars ($50,000)(see Amended Complaint, dated December 10, 2007, at II).

Respondent did not serve a written answer to either the complaint or the amended complaint but did appear by her husband, Beldev Raju, at the pre-hearing conference noticed in the notice of hearing.

Department staff filed a statement of readiness for an adjudicatory hearing with the Department's Office of Hearings and Mediation Services on March 19, 2008. The matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride. The hearing convened on January 12, 2009. Respondent did not appear personally but her husband Beldev Raju and her daughter Hermon Raju appeared on her behalf. The hearing was adjourned to allow Department staff to locate the affidavit of service for the amended complaint and to allow respondent to appear personally at the hearing (see January 2009 Hearing Transcript, at 30, 36-37).

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[2] The effective date for each of the consent orders is the date on which the Department signed the order. For example, the effective date for DEC Consent Order, Case No. 3-179108 that respondent signed on January 27, 2006 is February 21, 2006, the date on which the Department signed it.

[3] The 2002 Consent Order was presented and discussed at the hearing (see, e.g., January 2009 Hearing Transcript, at 13), but was not received in evidence. In administrative enforcement proceedings, official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Department (see 6 NYCRR 622.11[a][5]). Pursuant to that provision, I am taking official notice of the 2002 Consent Order. The second 2006 Consent Order was discussed at the hearing (see, e.g., April 2009 Hearing Transcript, at 36), but was not received in evidence. Pursuant to 6 NYCRR 622.11(a)(5), I am also taking official notice of the second 2006 Consent Order. The first 2006 Consent Order was received in evidence (see Hearing Exhibit 1).

On March 17, 2009, Department staff served a second amended complaint upon respondent. The hearing reconvened on April 20, 2009, and at that time respondent appeared personally along with her husband and daughter.

The ALJ prepared a hearing report, a copy of which is attached, in which she recommends that an order be issued finding that respondent violated the first 2006 Consent Order by failing to pay the full penalty amount of $20,000, and that respondent be directed to pay $19,000 within thirty (30) days. I adopt the ALJ's Findings of Fact 1, 2, 4, 5, and 6 set forth in the hearing report, but modify Finding of Fact 3 and the Conclusion of Law as to the amount that respondent owes under the first 2006 Consent Order and further modify the penalty amount, as discussed below.

- Second Amended Complaint

An initial question in this proceeding is whether Department staff's second amended complaint should be considered. The ALJ states that the second amended complaint shall not be considered because Department staff failed to seek permission to serve that complaint in accordance with the requirements of 6 NYCRR 622.5. Pursuant to 6 NYCRR 622.5(a), a party may amend its pleading once without permission at any time before the period for responding expires or, if no responsive pleading is required, at least 20 days prior to commencement of the hearing. A party may amend its pleading at any time prior to the final decision of the commissioner by permission of the ALJ or the commissioner and absent prejudice to the ability of any other party to respond (see 6 NYCRR 622.5[b]).

In this instance, Department staff submitted the second amended complaint to the ALJ, under cover of a letter dated March 17, 2009 with a copy by certified mail to respondent. No objections were raised at that time by the ALJ or respondent. Furthermore, the second amended complaint was discussed when the hearing reconvened (see, e.g., April 2009 Hearing Transcript, at 9-10), and no objections to that complaint were raised. Based on these circumstances and in absence of prejudice to any party, I hereby accept the second amended complaint in the record of this proceeding.[4]

- Amount of Civil Penalty Owed under the First 2006 Consent Order

At the hearing, the amount of money that respondent owes under the first 2006 Consent Order was contested by the parties. Respondent admits to having paid only $1,000 of the $20,000 penalty assessed by the first 2006 Consent Order, which covered both the Parksville and Garrison facilities. Respondent, however, contends that Department staff waived half of the twenty thousand dollar ($20,000) penalty in the negotiation of a separate consent order for the Garrison facility (that is, the second 2006 Consent Order), and that only $9,000 remains due from respondent. Respondent supports her position by offering into evidence a letter from her consultant that referenced a waiver of $10,000 of the $20,000 penalty in the first 2006 Consent Order (see Hearing Exhibit A). Respondent, however, did not call her consultant to testify. Department staff states that it was not aware of the letter (see April 2009 Hearing Transcript, at

[4] The second amended complaint requested the same civil penalty as was set forth in the amended complaint, that is fifty thousand dollars ($50,000)(see Second Amended Complaint, at II).

28-29), and maintains that no waiver had occurred.

I note that the second 2006 Consent Order, which addressed the Garrison facility, was signed by respondent's husband on behalf of respondent on January 30, 2006, just three days after respondent signed the first 2006 Consent Order that addressed the Garrison and the Parksville facilities. The second 2006 Consent Order, to a large extent, repeats language from the 2002 Consent Order with respect to violations and required remedial activity at the Garrison facility. Pursuant to the second 2006 Consent Order, a civil penalty of $10,000 was imposed but suspended contingent upon respondent's compliance with the requirements of the order, which requirements paralleled those contained in the 2002 Consent Order. Department staff subsequently waived the $10,000 penalty in the second 2006 Consent Order (see Hearing Exhibit 2, 12th row), although the record does not set forth the basis for this waiver.

The Department attorney contended, and Department staff testified, that the first 2006 Consent Order covered both respondent's Garrison facility and Parksville facility (see, e.g., April 2009 Hearing Transcript, at 10, 16-17). The interrelationship between the two 2006 consent orders is unclear, based upon the evidence in this record. As noted, respondent's husband signed the second 2006 Consent Order (which specifically addressed the Garrison facility) three days after respondent signed the first 2006 Consent Order (which applied to both the Garrison and the Parksville facilities). It is not unreasonable to conclude that the penalty in the first 2006 Consent Order (which covered both the Garrison and the Parksville facilities) was intended to be reduced by ten thousand dollars ($10,000), the amount of penalty referenced in the second order with respect to the Garrison facility. Accordingly, it is a fair inference on this record that the second 2006 Consent Order modified the first 2006 Consent Order, and that the $20,000 penalty in the first 2006 Consent Order was reduced by $10,000.

In an administrative enforcement proceeding, Department staff bears the burden of proof on all charges and matters which they affirmatively assert in the instrument that initiated the proceeding (see 6 NYCRR 622.11[b][1]). Department staff met its burden that respondent violated the first 2006 Consent Order, but did not meet its burden on its contention that the second 2006 Consent Order did not reduce the penalty in the first 2006 Consent Order from $20,000 to $10,000. Accordingly, based on this record, the amount owed by respondent pursuant to the first 2006 Consent Order as modified by the second 2006 Consent Order, is $10,000. Of that amount respondent has paid only $1,000 (see, e.g., April 2009 Hearing Transcript, at 33), and as a result, respondent owes $9,000.

- Additional Penalty Request

In addition to the payment of the amount owed under the first 2006 Consent Order, Department staff requested that an additional $50,000 penalty be imposed upon respondent for her failure to pay the consent order penalty. Because Department staff failed to provide any justification for the penalty amount of $50,000, the ALJ rejected staff's request.

I agree with the ALJ that the failure to provide justification, particularly for a penalty of this magnitude, warrants rejecting the proposed $50,000 penalty. However, imposing some

penalty for failing to comply with the payment terms of a consent order is appropriate and warranted. Respondent signed a consent order that required her to pay a penalty. She failed to do so and has offered no explanation for her failure to satisfy that obligation. Her failure to comply led to this hearing and attendant costs.

Section 71-1929 of the ECL provides that any person who violates the provisions of an order of the Commissioner issued pursuant to titles 1 through 11 and title 19 of article 17 shall be liable for a civil penalty not to exceed thirty-seven thousand five hundred dollars ($37,500) per day for each violation. The first 2006 Consent Order was issued, in part, pursuant to title 10 of article 17 ("Control of the Bulk Storage of Petroleum").

In consideration of respondent's failure to meet her consent order obligations, the monetary benefit that she received by not paying the required penalty, and the lack in this record of any valid excuse for the nonpayment, I hereby assess a penalty of four thousand five hundred dollars ($4,500) which is in addition to the nine thousand dollars ($9,000) outstanding under the first 2006 Consent Order. This penalty, although substantially lower than the per day penalty in ECL 71-1929, represents a significant percentage of the amount that respondent owes and is appropriate in light of respondent's multi-year and unexcused noncompliance. By this order, respondent owes a total civil penalty in the amount of thirteen thousand five hundred dollars ($13,500) to the Department and is to pay this amount within thirty (30) days of the service of this order upon her.

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

I. Respondent Manjit Raju is adjudged to have violated DEC Consent Order, Case No. 3-179108, effective February 21, 2006, by failing to comply with its penalty payment provisions.

II. Within thirty (30) days of the service of this order upon respondent, respondent Manjit Raju shall submit to the Department a payment of nine thousand dollars ($9,000), which represents the amount that respondent owes pursuant to DEC Consent Order, Case No. 3-179108, effective February 21, 2006.

III. Respondent Manjit Raju is also assessed a civil penalty of four thousand five hundred dollars ($4,500) for her failure to comply with the penalty payment provisions of DEC Consent Order, Case No. 3-179108, effective February 21, 2006. Respondent shall submit payment of the four thousand five hundred dollars ($4,500) to the Department within thirty (30) days of the service of this order upon her. Payment of the total amount of thirteen thousand five hundred dollars ($13,500) shall be made in the form of a cashier's check, certified check, or money order payable to the order of the "New York State Department of Environmental Conservation" and mailed to the Department at the address set forth in paragraph IV of this order.

IV. All communications from respondent to the Department concerning this order shall be made to:

Benjamin Conlon, Esq.
Associate Attorney
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, New York 12233[5]

V. The provisions, terms, and conditions of this order shall bind respondent Manjit Raju, and her agents, heirs, successors, and assigns, in any and all capacities.

For the New York State Department of
Environmental Conservation

By: /s/
Peter M. Iwanowicz
Acting Commissioner

Dated: December 30, 2010
Albany, New York

[5] Because the Department attorney who handled this matter has taken a position with another agency, I am designating the Department's Bureau Chief for Remediation and Revitalization as the contact for purposes of this order.

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

In the Matter

-of-

the Alleged Violation of Article
17 of the Environmental Conservation Law and
Title 6 of the Official Compilation
of Codes, Rules and Regulations of the State of
New York (6 NYCRR) by

MANJIT RAJU,
Respondent,

DEC CASE NUMBER 3-179108

HEARING REPORT

-by-

_____/s/_____
Molly T. McBride
Administrative Law Judge

December 17, 2010

PROCEEDINGS

Manjit Raju, Garrison, New York (respondent) is the owner and operator of two petroleum bulk storage facilities: (1) 1135 Route 9D, Garrison, NY, and (2) Route 17 East, Parksville, NY. The respondent executed an order on consent (Order) with the New York State Department of Environmental Conservation (Department). The Order was signed by respondent on January 27, 2006 and the Department Commissioner on February 21, 2006. The Order assessed a penalty of twenty thousand dollars ($20,000.00) against respondent for failing to comply with a prior February 2002 consent order.[6] By signing the Order, respondent agreed to the issuing and entering of the Order without further notice, waived her right to hearing and agreed to be bound by the terms, conditions and provisions contained in the Order.

Department staff commenced this proceeding by notice of hearing and complaint dated November 21, 2007 due to respondent's failure to pay the penalty in full. An amended complaint was served on Beldev Raju, respondent's husband, on December 10, 2007 when he appeared on respondent's behalf for a pre-hearing conference pursuant to the notice of hearing and complaint. The amended complaint differed from the original complaint in the amount of penalty requested. The complaint requested two different penalty amounts, forty-thousand dollars ($40,000) and twenty-thousand dollars ($20,000). The amended complaint changed the penalty amount requested by Department staff to fifty-thousand dollars ($50,000). Respondent did not serve a written answer to either the complaint or amended complaint.

Department staff served a Statement of Readiness with the Department's Office of Hearings and Mediation Services on March 19, 2008. The matter was assigned to Administrative Law Judge (ALJ) Molly T. McBride. After discussions between the parties, a hearing was scheduled for January 12, 2009 in the Department's Region 3 Office in New Paltz, New York.

The hearing began on January 12, 2009. Department Staff appeared at the January hearing by Benjamin Conlon, Esq., Associate Attorney, and Alan Michaels, Esq., Senior Attorney. Also present for the Department was Scott Owens, Esq., R. Daniel Bendell, Engineer, and Maria Mastroianni, legal assistant. Respondent did not appear on January 12, 2009 personally but her husband Beldev Raju and her daughter Hermon Raju appeared on her behalf.

The hearing was adjourned shortly after it began at the parties' request. A question arose as to service of the amended complaint on respondent. Department staff was unable to provide proof of service at the hearing. The hearing was adjourned to allow Department staff to locate an affidavit of service and to allow respondent to appear personally at the hearing.

[6] The consent order is not clear as to what property the violations occurred at.

The hearing was reconvened on April 20, 2009 and at that time respondent appeared personally along with her husband and daughter. Department staff appeared by Mr. Michaels. At the start of the hearing respondent acknowledged her signature on the consent order of February 2006 and acknowledged service of the complaint and amended complaint.

Department Staff served a **second** amended complaint on respondent on or about March 17, 2009 which identifies respondent's ownership of both properties and states that the 2006 order on consent was related to both properties. Department Staff did not seek leave to serve the second amendment complaint, as required by 6 NYCRR 622.5. A pleading may be amended more than once, however permission of the ALJ or the Commissioner must be obtained. [7] Department Staff made no request to serve the second amended pleading and therefore, the second amended complaint will not be considered.

HEARING

The hearing began on January 12, 2009 in the Region 3 office in New Paltz. Department Staff called Maria Mastroianni, legal assistant in the Department's Bureau of Spill Prevention as a witness. Ms. Mastroianni is responsible for tracking and logging in payments made once a consent order is executed. Ms. Mastroianni testified that she was responsible for overseeing the Raju consent order and only two payments were made totaling one thousand dollars ($1,000). Ms. Mastroianni presented a tally sheet that was marked as Department Exhibit 2. She testified that she creates a tally sheet to assist her in tracking payments received on consent orders. Exhibit 2 has respondent's name on 3 consecutive lines. The first two lines contain DEC petroleum bulk storage number (PBS) 3-179108, and the third line has a different PBS number, 3-601291. Ms. Mastroianni was the only witness who testified at the hearing in January. The hearing was adjourned during Ms. Mastroianni's testimony due to the question regarding service of the amended complaint.

The hearing was reconvened on April 20, 2009 in the Region 2 office. Manjit Raju appeared for the hearing along with her husband Beldev and her daughter Hermon Raju. Due to respondent's discomfort in testifying, she requested that her husband testify. In conversations held on and off the record, it was clear that respondent understood the conversations and she was able to converse in English with those present. Mr. Raju was involved in the operation of the properties at issue. It was Mr. Raju and not respondent who was involved in the discussions with Department staff regarding the violations and the consent order negotiations. Respondent's request that Mr. Raju be allowed to testify on her behalf was granted, based in part of his active role and familiarity with the matter.

As noted above, respondent owns two parcels that have service stations located on them. Respondent indicated at the April 2009 hearing that she was unclear which of her properties the consent order related to. Department staff claimed that it relates to both

[7] Consistent with the CPLR, a party may amend its pleading at any time prior to the final decision of the commissioner by permission of the ALJ or the commissioner and absent prejudice to the ability of any other party to respond [6 NYCRR 622.5(b)].

properties. The Order is unclear in that it references that respondent owns a petroleum bulk storage facility (singular) but then lists both property addresses and then refers back to "facility" and not "facilities". Respondent's acknowledgement on the Order identifies her as the owner of the Parksville property but makes no mention of the Garrison property. The amended complaint references respondent's ownership of the Garrison property and makes no mention of the Parksville property.

Beldev Raju confirmed that $1,000.00 of the twenty thousand dollars ($20,000) owed was paid on the consent order. He testified that both he and his wife believe that only $9,000 remains due on the consent order. Mr. Raju testified that the Department forgave $10,000 of the penalty owed under the February 21, 2006 consent order. To support his claim, Mr. Raju noted DEC Exhibit 2, the tally sheet. On the third line referencing the respondent, it reads as follows: Manjit Raju PBS number 3-601291 and has the notation: "penalty has been waived". Mr. Raju testified that both he and his wife understood that the Department forgave a $10,000 penalty for the Garrison property and that the penalty was assessed in the Order at issue. To further support his argument, Mr. Raju presented a letter from Environmental Engineering Solutions, P.C. dated February 3, 2006 (after the consent order was signed by respondent).[8] The letter, Exhibit A, states, in part, in a paragraph entitled "Garrison Property",

> "A Consent Order in this regard was signed on January 30, 2006 during our meeting with DEC. A $10,000 penalty was waived, provided a work plan is submitted to DEC within 30 days of signing of the Consent Order."

Ms. Mastroianni was recalled after Mr. Raju testified. Exhibit A references a date of January 30, 2006 as the date the consent order with the waived penalty was signed. The consent order at issue, DEC Exhibit 1, was signed by the Commissioner on February 21, 2006 and by respondent on January 27, 2006, ***not*** January 30, 2006. Ms. Mastroianni testified that as two different PBS numbers are noted on the tally sheet, DEC Exhibit 2, two different consent orders are being referenced and the consent order that has a penalty waived differs from the consent order at issue.

DISCUSSION

There are two issues in this proceeding, what amount of penalty remains to be paid under the consent order and what, if any, additional penalty should be assessed to respondent for her failure to comply with the consent order.

There is no dispute that the penalty assessed by the order on consent was not paid by respondent. Although there is disagreement on the total amount owed under the consent order, there is no disagreement that the order was violated and the majority of the penalty remains unpaid. Ms. Mastroianni testified that a separate case number is used with regards to the suspended penalty and the $20,000 assessed under the consent order at

[8] The Rajus hired Environmental Engineering Solutions, P.C. to assist with the clean up of the Parksville and Garrison properties.

issue was not partially waived. Both parties acknowledge that there are other matters pending between the Department and respondent.

The second issue is Department staff's request in the amended complaint that respondent be ordered to pay a penalty of $50,000 for her failure to comply with the consent order. The Department has a Civil Penalty Policy (Policy) issued by Commissioner Thomas Jorling in June, 1990. The Policy has recommended penalty amounts to be assessed against respondents for violations of the ECL. The purpose of the Policy is to guide Department Staff in determining the amount of penalty to be assessed in negotiated settlements as well as matters that proceed to hearing. Section IV, subpart A states:

In an adjudicatory hearing, Department staff should request a specific penalty amount, and should provide an explanation of how that amount was determined, with reference to: (1) the potential statutory maximum; (2) this guidance document; (3) any program specific guidance document(s); (4) other similar cases; and (5) if relevant, any aggravating and mitigating circumstances which staff considered. This may be done orally at the hearing, or by written submission, at the discretion of the judge or prosecutor. The record should include evidence relevant to any aggravating or mitigating factors which are applicable. If the violation is proven, it should be presumed that a penalty is warranted unless respondent documents compelling circumstances to the contrary.

The $50,000 penalty requested by Department Staff is not explained or supported in the complaint or amended complaint, and the subject was not addressed by Department staff at the hearing. Department staff does not identify the statutory maximum, provide any program specific guidance that the Spill Prevention Unit may utilize to determine a penalty amount, no similar cases were referenced, and Department staff has not referred to any aggravating or mitigating circumstances.

Respondent argued that only $9,000 remains unpaid on the Order but offered no explanation for why the $9,000 was not paid. Respondent's husband testified that he hired a company to assist with remediation and a cleanup plan was timely submitted to the Department. No further explanation was offered by either party as to the site clean up or its current condition.

FINDINGS OF FACT

1. Respondent Manjit Raju owns two properties with petroleum bulk storage tanks located on them. The properties are located at 1135 Route 9D, Garrison, N.Y. and Route 17 East, Parkville, New York.

2. Respondent executed a consent order on January 27, 2006 acknowledging violations of Article 17 of the Environmental Conservation Law (ECL). The consent order was signed by Commissioner Denise Sheehan on February 21, 2006. The Consent Order assessed a penalty of twenty thousand dollars, $20,000 for violations of Article 17.

3. Respondent violated the consent order by failing to pay the full penalty of $20,000.

4. The Department commenced an enforcement action against respondent for her failure to comply with the Consent Order by service of a Notice of Hearing and Complaint on November 21, 2007. Department Staff served respondent with an amended complaint on December 10, 2007 requesting an order finding that the respondent violated Article 17 of the ECL and requested a penalty in the amount of $50,000 for the respondent's violation of the consent order.

5. Department Staff served a second amended complaint on or about March 17, 2009 without permission of the ALJ or the Commissioner.

6. A hearing was held on April 20, 2009 where respondent acknowledged that she has paid a total of $1,000.00 to the Department with regards to the February 21, 2006 consent order.

CONCLUSIONS OF LAW

1. Respondent violated ECL Article 17 by failing to comply with the February 21, 2006 Order on Consent. A penalty of $19,000 remains unpaid.

RECOMMENDATION

Department staff has established that respondent violated the consent order. Staff had three opportunities to provide support for the $50,000 penalty requested: (1) in the complaint, (2) in the amended complaint, and (3) at the hearing. Department staff did not provide any support for the requested penalty. Therefore, I cannot recommend the penalty requested.

Respondent acknowledges that she executed the order on consent and did agree to pay the penalty of $20,000.00 and only paid $1,000.00. I recommend that the Commissioner issue an order finding that the respondent violated the February 21, 2006 consent order by failing to pay the full penalty amount of $20,000 and direct that the respondent pay the remaining penalty of $19,000.00 within 30 days of receipt of the order herein.