

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations
of the Environmental Conservation Law
(ECL) Article 17 and Parts 612, 613 and
614 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York (6
NYCRR),

ORDER

DEC Case No.
R4-2015-0713-85

- by -

THREE SON PETROLEUM, INC, TARIQ MAHMOOD
and NAEEM MAHMOOD,

Respondents.

This administrative enforcement proceeding concerns alleged violations of ECL article 17 and 6 NYCRR former parts 612, 613, and 614¹ at a petroleum bulk storage (PBS) facility (number 4-163074) that respondent Three Son Petroleum, Inc, owns at Amsterdam Road, R.D. 4, Route 5, Glenville, New York. Department staff alleged that Tariq Mahmood and Naeem Mahmood were operators at this facility. At the facility, which serves as a retail gas station, are three underground PBS tanks with capacities of 8,000, 10,000 and 12,000 gallons, respectively, that were installed in 1996, and one aboveground PBS tank with a capacity of 1,000 gallons that was also installed in 1996.

In accordance with 6 NYCRR 622.3(a)(3), staff of the New York State Department of Environmental Conservation (Department) commenced this proceeding by service of a notice of hearing and complaint dated September 2, 2015 on respondents by certified mail. Respondent Three Son Petroleum, Inc, signed for its

¹ In October 2015, 6 NYCRR parts 612, 613, and 614 were repealed and replaced with a new part 613. As Administrative Law Judge Michael S. Caruso noted, former parts 612, 613, and 614 apply to the violations cited in this proceeding occurring before October 2015 (see Default Summary Report at 2 n2). Current part 613 applies to (a) violations occurring after the effective date of the regulations, and (b) any corrective action directed pursuant to this Order.

certified mailing on September 5, 2015, and respondents Tariq Mahmood and Naeem Mahmood signed on October 1, 2015. None of respondents answered the complaint.

By cover letter dated November 4, 2015, Department staff filed and served a motion for default judgment pursuant to 6 NYCRR 622.15. This matter was assigned to Administrative Law Judge (ALJ) Michael S. Caruso, who prepared the attached default summary report, which I adopt as my decision in this matter, subject to the following comments.

Department staff's complaint alleges numerous PBS violations at this facility:

- 6 NYCRR former 612.2(a)(2) for failing to renew the PBS facility registration for the facility;
- 6 NYCRR former 613.4(a) for failing to keep daily bottom water level records for the purpose of leak detection for each PBS tank, and to take accurate inventory records of its underground PBS tanks numbered 1 and 3;
- 6 NYCRR former 613.3(d) for failing to maintain the dispenser pumps associated with underground PBS tanks numbered 1, 2 and 3 allowing liquids to accumulate, and failing to maintain properly the tank top sump associated with underground PBS tank numbered 1; and
- 6 NYCRR former 614.14(g) for failing to have proper overfill protection for underground PBS tanks numbered 1, 2, and 3.

I agree with the ALJ that Department staff met their burden of establishing the alleged violations with respect to Three Son Petroleum, Inc, which owns the facility. Although Department staff established the violations for 6 NYCRR former 613.4(a), 613.3(d) and 614.14(g) with respect to Tariq Mahmood, the registration requirement in 6 NYCRR former 612.2 was the obligation of the facility owner, not a facility operator. Accordingly, respondent Tariq Mahmood, as facility operator, is not liable for the registration violation.

With respect to Naeem Mahmood, I concur with the ALJ that Department staff did not meet its burden of providing proof of the claim that he is also an operator of the facility. Accordingly, Department staff's motion for default judgment against Naeem Mahmood is denied.

Department staff has requested a civil penalty in the amount of nine thousand dollars (\$9,000), to be jointly and severally imposed on respondents. The ALJ recommends that seven thousand five hundred dollars (\$7,500) be imposed, jointly and severally on Three Son Petroleum, Inc, and Tariq Mahmood for violations of 6 NYCRR former 613.4(a), 613.3(d) and 614.14(g). He recommends that the remaining one thousand five hundred dollars (\$1,500) be imposed on respondent owner Three Son Petroleum, Inc, for violation of the registration requirement (6 NYCRR former 612.2).

The recommended penalty is authorized and warranted.² I hereby impose a total civil penalty in the amount of nine thousand dollars (\$9,000) to be allocated between respondents Three Son Petroleum, Inc, and Tariq Mahmood in the manner recommended by the ALJ. Payments are to be submitted within thirty (30) days of the service of this order upon respondents Three Son Petroleum, Inc, and Tariq Mahmood.

Department staff has requested that respondents undertake specified corrective actions at the facility and provide the following photographs and documents to Department staff within thirty (30) days of service of the Commissioner's order on them:

- A. photographs and documentation certifying the dispenser sumps associated with underground PBS tanks 1, 2 and 3 are empty and clean;
- B. photographs and documentation certifying that the broken cover to the tank top sump associated with underground PBS tank 1 has been replaced;
- C. thirty days of properly reconciled inventory records that include proper tank bottom water measurements for underground PBS tanks 1, 2 and 3; and
- D. documentation that underground PBS tanks 1, 2 and 3 have overfill prevention equipment (i.e., auto shut-off, high level overfill alarm or ball-float valve) installed.

² ECL 71-1929 provides that any person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto, shall be liable to a penalty up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation.

These corrective actions are authorized and warranted on this record.

Department staff has also requested that respondent Three Son Petroleum, Inc, be directed to submit a complete registration renewal application to the Department for the facility within seven (7) days of service of the Commissioner's order on respondent together with the applicable registration fees.

Department counsel advised ALJ Caruso by letter dated May 12, 2016, that respondent Three Son Petroleum, Inc, registered the PBS facility on April 14, 2016. Although this does not affect the finding of a violation for failure to register the facility for several years, it does negate the need for the requested corrective action.

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

- I. Department staff's motion for default judgment against respondent Three Son Petroleum, Inc, and Tariq Mahmood pursuant to 6 NYCRR 622.15, is granted.
- II. Department staff's motion for default judgment against respondent Naeem Mahmood, pursuant to 6 NYCRR 622.15, is denied.
- III. Respondent Three Son Petroleum, Inc, is adjudged to have violated 6 NYCRR former 612.2(a)(2), for failing to renew the PBS facility registration for the facility.
- IV. Respondents Three Son Petroleum, Inc, and Tariq Mahmood are adjudged to have violated the following:
 - A. 6 NYCRR former 613.4(a) for failing to keep daily bottom water level records for the purpose of leak detection for each tank and to take accurate inventory records for underground PBS tanks numbered 1 and 3;
 - B. 6 NYCRR former 613.3(d) for failing to maintain the dispenser pumps associated with underground PBS tanks numbered 1, 2 and 3 allowing liquids to accumulate, and failing to properly maintain the tank top sump associated with underground tank numbered 1; and

C. 6 NYCRR former 614.14(g) for failing to have proper overfill protection for underground PBS tanks numbered 1, 2, and 3.

V. With respect to civil penalty:

A. Respondent Three Son Petroleum, Inc, is assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500) for failing to renew the PBS facility registration (from August 9, 2012 to April 14, 2016). Within 30 days of service of this order upon respondent Three Son Petroleum, Inc, respondent shall pay the civil penalty of one thousand five hundred dollars (\$1,500) by certified check, cashier's check, or money order made payable to the New York State Department of Environmental Conservation; and

B. Respondents Three Son Petroleum, Inc, and Tariq Mahmood are jointly and severally assessed a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) for the violations referenced in Paragraph IV of this order. Within thirty (30) days of service of this order upon respondents Three Son Petroleum, Inc, and Tariq Mahmood respondents shall pay the civil penalty in the amount of seven thousand five hundred dollars (\$7,500) by certified check, cashier's check, or money order made payable to the New York State Department of Environmental Conservation.

VI. The penalty payments shall be mailed or hand-delivered to the Department at the following address:

NYSDEC Region 4
1130 North Westcott Road
Schenectady, New York 12306
Attention: Dusty Renee Tinsley, Esq.

VII. Within thirty (30) days of service of this order upon respondents Three Son Petroleum, Inc, and Tariq Mahmood respondents shall perform the following corrective action:

1. empty and clean the dispenser sumps associated with underground PBS tanks 1, 2, and 3 and submit photographs and documentation that so demonstrates;

2. replace the broken cover to the tank top sump associated with underground PBS tank 1 and submit photographs and documentation that so demonstrates;
3. provide thirty (30) days of properly reconciled inventory records that include proper tank bottom water measurements for underground PBS tanks 1, 2, and 3; and
4. provide documentation that underground PBS tanks 1, 2, and 3 have overflow prevention equipment (i.e., auto shut-off, high level overflow alarm or ball-float valve) installed.

VIII. Respondents Three Son Petroleum, Inc, and Tariq Mahmood shall submit all documentation and other evidence required in paragraph "VII" of this order to the Department at the following address:

Mr. Thomas Sperbeck
NYSDEC Region 4
1130 North Westcott Road
Schenectady, New York 12306.

IX. The provisions, terms, and conditions of this order shall bind respondents Three Son Petroleum, Inc, and Tariq Mahmood and their agents, successors, and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By:

Basil Seggos
Commissioner

Dated: October 25, 2016
Albany, New York

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

In the Matter of the Alleged Violations
of the Environmental Conservation Law
(ECL) Article 17 and Parts 612, 613 and
614 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York (6
NYCRR),

**DEFAULT
SUMMARY REPORT**

DEC File No.
R4-2015-0713-85

- by -

**THREE SON PETROLEUM, INC, TARIQ MAHMOOD
and NAEEM MAHMOOD,**

Respondents.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General
Counsel (Dusty Renee Tinsley of counsel), for staff of the
Department of Environmental Conservation

- No appearance for respondents

PROCEEDINGS

Staff of the New York State Department of Environmental
Conservation (Department) commenced this administrative
enforcement proceeding by service of a September 2, 2015, notice
of hearing and complaint upon respondents Three Son Petroleum
Inc,¹ Tariq Mahmood, and Naeem Mahmood (respondents) by certified
mail return receipt requested. Respondents Three Son Petroleum
Inc and Tariq Mahmood received the notice of hearing and
complaint on September 5, 2015, and respondent Naeem Mahmood
received the pleadings on October 1, 2015.

The complaint alleges various violations of the petroleum
bulk storage (PBS) facility regulations at respondent Three Son
Petroleum Inc's PBS facility (PBS facility No. 4-163074) located

¹ The corporate name as filed with the Department of State.

at Amsterdam Road, R.D. 4, Route 5, Glenville, New York (Schenectady County).

The notice of hearing instructed respondents that a written answer must be filed within twenty days of respondents' receipt of the complaint. The complaint asserts that respondent Three Son Petroleum Inc owns the PBS facility and respondents Tariq Mahmood and Naeem Mahmood operate the facility. The facility is engaged in retail gasoline sales. The PBS facility consists of three underground PBS tanks (Tank 1 - 8,000 gallons [gasoline], Tank 2 - 12,000 gallons [gasoline] and Tank 3 - 10,000 gallons [diesel]) and one aboveground PBS tank (Tank 4 - 1,000 gallons [kerosene]).

In four causes of action, the complaint alleges that respondents violated various provisions of 6 NYCRR parts 612 (Registration of Petroleum Storage Facilities), 613 (Handling and Storage of Petroleum) and 614 (Standards for New and Substantially Modified Petroleum Storage Facilities).²

For these alleged violations, Department staff requests a total civil penalty of \$9,000 and an order from the Commissioner directing respondents to submit a PBS renewal application with the appropriate fees, and submit photographs and documentation to demonstrate respondents have cured the violations alleged in the complaint.

Motion for Default Judgment

By cover letter dated November 4, 2015, Department staff filed and served a motion for default judgment pursuant to 6 NYCRR 622.15. This matter was assigned to Administrative Law Judge Richard Sherman on November 12, 2015 and reassigned to me on November 23, 2015. In addition to the November 4, 2015 transmittal letter, staff's motion papers consist of the following:

1. Motion for Default Judgment and Order, dated November 4, 2015;
2. Affirmation of Dusty Renee Tinsley (Tinsley Affirmation), dated November 4, 2015 with the following attachments:

² Effective October 11, 2015, 6 NYCRR parts 612, 613 and 614 were repealed and replaced by new part 613. For purposes of the violations alleged in this matter the prior parts 612, 613 and 614 apply.

Attachment 1 - Affidavit of Service By Certified Mail Return Receipt of Jill Viscusi, sworn to November 4, 2015 with the following attached:

- Attachment A - copies of the United States Postal Service (USPS) Certified Mail Receipts;
- Attachment B - copies of three signed and dated USPS Return Receipt cards from respondents; and
- Attachment C - copies of a September 2, 2015 letter and a September 28, 2015 letter from Ms. Tinsley to respondents serving the notice of hearing and complaint, with USPS tracking numbers noted.

Attachment 2 - Notice of Hearing and Complaint dated September 2, 2015 with the following attached:

- Attachment 1 - New York State Department of State Entity Information, current through July 30, 2015;
- Attachment 2 - PBS Application dated August 7, 2007;
- Attachment 3 - PBS Facility Information Report printed July 7, 2015;
- Attachment 4 - PBS Certificate No. 4-163074 issued August 9, 2007 with an expiration date of August 9, 2012, printed August 9, 2007; and
- Attachment 5 - Notice of Violation dated January 23, 2014.

Attachment 3 - a proposed order.

3. Affidavit of Thomas Sperbeck (Sperbeck Affidavit), sworn to November 4, 2015 with the following attachments:

- Attachment 1 - New York State Department of State Entity Information, current through July 30, 2015;
- Attachment 2 - PBS Application dated August 7, 2007;
- Attachment 3 - PBS Facility Information Report printed July 7, 2015;

Attachment 4 - PBS Certificate No. 4-163074 issued August 9, 2007 with an expiration date of August 9, 2012, printed August 9, 2007;

Attachment 5 - Notice of Violation dated January 23, 2014.

Attachment 6 - DEE-1: Civil Penalty Policy, June 20, 1990;

Attachment 7 - Federal Register Notice, Vol. 50, No. 9, Page 2022 dated January 14, 1984 (Schenectady-Niskayauna Aquifer System); and

Attachment 8 - DEE-22: Petroleum Bulk Storage Inspection Enforcement Policy - Penalty Schedule.

4. Affidavit of Service of Jill Viscusi, sworn to December 3, 2015 (verifying November 4, 2015 service of the motion for default judgment on respondents).

DISCUSSION

The respondents' failure to timely file an answer constitutes a default and a waiver of respondents' right to a hearing (6 NYCRR 622.15[a]). Department staff's motion for a default judgment must include proof of service of the notice of hearing and complaint, proof of respondents' failure to file a timely answer, and a proposed order (see 6 NYCRR 622.15[b]). In addition, staff must serve the motion papers on the respondents or their representatives (see Matter of Dudley, Decision and Order of the Commissioner, July 24, 2009).

In PBS enforcement proceedings, Department staff is directed "to include, with staff's complaint or motion for order without hearing (in lieu of complaint), at a minimum the following documents: [i] copy of the facility's PBS registration (if one has been issued); [ii] the PBS facility information report, if any; and [iii] any notice of violation that is a basis for Department staff's allegations in the charging instrument." (See Matter of Farmer, Order of the Commissioner, October 22, 2009, at 3.) Moreover, on all default judgment motions, Department staff must provide proof of the facts sufficient to support the claim. (See Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, Dec. 12, 2013, at 2-3.)

In the instant proceeding, Department staff has satisfied the requirements of 6 NYCRR 622.15(b) by providing proof of

service of the notice of hearing and complaint (see Tinsley Affirmation, Attachment 1), proof of respondents' failure to timely answer the amended complaint (see Tinsley Affirmation, ¶¶ 6 - 7) and a proposed order (see Tinsley Affirmation, Attachment 3). The respondents Three Son Petroleum Inc and Tariq Mahmood received the notice of hearing and complaint on September 5, 2015. Their answer was due September 25, 2015. Respondent Naeem Mahmood received the notice of hearing and complaint on October 1, 2015. Respondent Naeem Mahmood's answer was due October 21, 2015. Ms. Tinsley's November 4, 2015 affirmation demonstrates that respondents have not filed an answer. In addition, Department staff served a copy of the motion for default judgment on respondents (see Affidavit of Service of Jill Viscusi, sworn to December 3, 2015) consistent with the Commissioner's directive in Dudley, supra.

To date, the Office of Hearings and Mediation Services has not received a reply from respondents regarding Department staff's motion. Accordingly, staff's motion is unopposed.

Consistent with Matter of Farmer, supra, Department staff attached a copy of the facility's PBS certificate, the PBS facility information report and the January 23, 2014 Notice of Violation to staff's complaint (see Tinsley Affidavit, Attachment 2 [Attachments 3, 4 and 5]).

Department staff alleged that respondent Three Son Petroleum Inc is the owner of the facility (see Tinsley Affidavit, Attachment 2 - Complaint at ¶ 3). The PBS Application, Facility Information Report and PBS Certificate, attached to the complaint and the Sperbeck Affidavit, list Three Son Petroleum Inc as the owner of the facility.

Department staff alleged that respondents Tariq Mahmood and Naeem Mahmood are operators of the facility (see Tinsley Affidavit, Attachment 2 - Complaint at ¶ 8; Sperbeck Affidavit at ¶ 7). The allegation is in the form of a legal conclusion. The PBS Application, Facility Information Report and PBS Certificate, however, list Three Son Petroleum Inc as the operator. Those documents list Tariq Mahmood as president of Three Son Petroleum Inc and as the contact for correspondence and list Naeem Mahmood as the emergency contact.

Tariq Mahmood, however, signed the application on the line for "Name of Owner or Authorized Representative". By regulation, "[a]n application submitted by a corporation must be signed by a principal executive officer of at least the level of

vice-president or a duly authorized representative who is responsible for the operation of the facility." (See 6 NYCRR 612.2[f][2][emphasis added]). Accordingly, I find that Tariq Mahmood is an operator of the facility. Staff has not met its burden of providing proof of its claim that Naeem Mahmood is an operator of the PBS facility.

Staff also states in its papers that Three Son Petroleum Inc is an inactive corporation. The Department of State Entity Information sheet, attached to the complaint and the Sperbeck Affidavit, demonstrates that the corporation was dissolved by proclamation on July 27, 2011 and that its authority to do business in New York was annulled. Department staff does not address how this affects the analysis of the corporation's liability.

It has been previously held that a corporation that has been dissolved by proclamation due to the corporation's failure to file biennial statements or franchise tax returns, continues its corporate existence for purpose of winding up the corporate affairs including paying liabilities or obligations, for being sued and participating in administrative proceedings in its corporate name, even if the activities giving rise to liability occurred after corporate dissolution (see Matter of L-S Aero Marine, Inc. and David Lawson, Order of the Commissioner, 2010 WL 3366174, adopting default summary report, *8 [June 29, 2010]; Matter of AMI Auto Sales Corp., Manuel R. Inoa, and Ramon B. Reyes, Decision and Order of the Commissioner, 2012 WL 1384758, *3 [February 16, 2012]). In this matter, the violations giving rise to liability occurred two and a half years after the 2011 dissolution. It is unclear on this record if the corporation is still in the process of winding up its affairs or is simply continuing business without regard to the fact that its authority to conduct business in New York has been annulled.

Nonetheless, a corporation may be held liable for violations that occur or accrue after its dissolution if the corporation continued its operations, operated its premises and held itself out as a de facto corporation, notwithstanding its being dissolved by proclamation. (See Bruce Supply Corp. v New Wave Mechanical, Inc., 4 AD3d 444 [2nd Dept 2004]; see also D & W Central Station Alarm Co., Inc. v Copymasters, Inc., 122 Misc2d 453 [Civ Ct, Queens County 1983], holding that a corporation that continued its operations, operated its premises and held itself out as a corporation, notwithstanding its alleged dissolution, is estopped from pleading dissolution and avoiding its obligations). Here, at the time of the January 2014

inspection, respondent Three Son Petroleum Inc continued operation of the gas station and was still listed as the owner and operator of the facility.³

Department staff provided the Sperbeck Affidavit in support of the violations alleged by staff. The Sperbeck Affidavit is supported, in part, by a copy of the January 23, 2014 Notice of Violation regarding the violations witnessed during staff's inspection. Mr. Sperbeck specifically identifies the underlying facts constituting the violations he witnessed during his January 22, 2014 inspection of respondent Three Son Petroleum Inc's facility. Mr. Sperbeck also states that during his 2014 inspection he noted that the certificate had expired on August 9, 2012 and that as of the date of his affidavit (November 4, 2015), the certificate had not been renewed (see Sperbeck Affidavit at ¶ 9b). The Facility Information Report, printed July 7, 2015, also demonstrates that the registration expired August 9, 2012.

Department staff has, consistent with Matter of Queen City Recycle Center, supra, provided proof of the facts sufficient to support staff's claims against respondent Three Son Petroleum Inc as an owner and operator of the facility and respondent Tariq Mahmood as an operator of the facility. Department staff has not provided any proof in support of its legal conclusion that respondent Naeem Mahmood is an operator of the facility.

Accordingly, I conclude that Department staff has met its burden in showing that:

1. Respondent Three Son Petroleum Inc has not renewed the registration of respondent's PBS facility;
2. Respondents Three Son Petroleum Inc and Tariq Mahmood failed to keep daily bottom water level records for the purpose of leak detection for underground PBS tanks 1 and 3, as the automatic tank gauges indicated water was in the tanks;

³ Staff provides some evidence that the corporation is the owner of the facility. In the future, in situations where a business entity has been dissolved by proclamation and the dissolved entity owns real property, staff should provide a copy of the deed to the real property as it has been held that a corporation's ownership of real property, after its dissolution, is indicia of the corporation continuing to conduct business in New York (see Laurendi v Cascade Dev. Co. Inc., 5 Misc2d 688, 689 [Niagara County Ct 1957]).

3. Respondents Three Son Petroleum Inc and Tariq Mahmood failed to maintain the dispenser sumps associated with underground PBS tanks 1, 2, and 3, thereby allowing liquids to accumulate, and failed to properly maintain the tank top sump for underground PBS tank 1 as its top cover was broken and was missing a section; and
4. Respondents Three Son Petroleum Inc and Tariq Mahmood failed to have proper overflow protection for underground PBS tanks 1, 2, and 3 as the tanks did not have an auto shut-off valve, high level alarm or ball float valve installed.

I conclude that respondent Three Son Petroleum Inc is liable for violating 6 NYCRR 612.2(a)(2) and respondents Three Son Petroleum Inc and Tariq Mahmood are liable for violating 613.4(a), 613.3(d) and 614.14(g).

Penalties

Department staff requests that the respondents be assessed a civil penalty of \$9,000. Staff cites the provisions of ECL 71-1929 that set forth a maximum daily civil penalty of \$37,500 for violations of article 17 or the regulations promulgated pursuant thereto. Staff applied the Department's Civil Penalty Policy (DEE-1, June 20, 1990) in determining the appropriate penalty. Staff lists the following aggravating factors in support of the penalty requested: (1) the importance of PBS registration, monitoring and record keeping to staff's compliance monitoring of PBS facilities; (2) the seriousness of the violations; (3) respondents' failure to address the violations occurring in 2014; (4) respondents' continuing failure to bring the facility into compliance; and (5) respondents' facility is located above the Schenectady-Niskayuna Aquifer System. Staff also references the penalty ranges for each violation set forth in DEE-22: Petroleum Bulk Storage Inspection Enforcement Policy - Penalty Schedule (May 21, 2003) and applies those penalty amounts to the violations noted in the complaint.

Using those parameters, Department staff arrived at a penalty of \$6,000 but increased the penalty fifty percent to \$9,000 based on the noted aggravating factors. I note that applying the daily maximum penalty of \$37,500 per day to a single violation continuing from the January 22, 2014 inspection to the date of the complaint, September 2, 2015, a total of 588 days, would result in a maximum penalty of \$22,050,000. Here

staff has proven four violations that would bring the maximum penalty to \$88,200,000.

I conclude that a total penalty of \$9,000 is supported and authorized. I also conclude that the corrective actions recommended herein must be performed in compliance with the new PBS regulations, 6 NYCRR part 613, that became effective October 11, 2015.

Department staff also requests that the Commissioner hold the respondents jointly and severally liable for the payment of the civil penalty. Staff provides no grounds for doing so. With regard to the regulatory requirements, the owner alone is responsible for registering the facility (see 6 NYCRR 612.2). The requirements of 6 NYCRR 613.4(a) are an obligation of the operator. The requirements of 6 NYCRR 613.3(d) are an obligation of the owner or operator, and the requirements of 6 NYCRR 614.14(g) are the obligation of any person (see 6 NYCRR 614.1[g]).

Accordingly, joint and several liability can be applied to all of the violations except the one involving the registration. Department staff assigned a \$1,500 penalty (\$1,000 + fifty percent) to that violation.

CONCLUSIONS OF LAW

1. By failing to renew the PBS facility registration (from August 9, 2012 to date), respondent Three Son Petroleum Inc violated 6 NYCRR 612.2(a)(2) (First cause of action).
2. By failing to keep daily bottom water level records for the purpose of leak detection for underground PBS tanks 1 and 3, respondents Three Son Petroleum Inc and Tariq Mahmood violated 6 NYCRR 613.4(a) (Second cause of action).
3. By failing to maintain the dispenser sumps associated with underground PBS tanks 1, 2, and 3, and failing to properly maintain the tank top sump for underground PBS tank 1, respondents Three Son Petroleum Inc and Tariq Mahmood violated 6 NYCRR 613.3(d) (Third cause of action).
4. By failing to have proper overfill protection for underground PBS tanks 1, 2, and 3, respondents Three Son Petroleum Inc and Tariq Mahmood violated 6 NYCRR 614.14(g) (Fourth cause of action).

RECOMMENDATIONS

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

1. granting Department staff's motion for default judgment pursuant to 6 NYCRR 622.15 against respondents Three Son Petroleum Inc and Tariq Mahmood;
2. denying Department staff's motion for default judgment against respondent Naeem Mahmood;
3. holding that respondent Three Son Petroleum Inc violated 6 NYCRR 612.2(a)(2) for failing to renew the PBS facility registration (from August 9, 2012 to date);
4. holding that respondents Three Son Petroleum Inc and Tariq Mahmood violated the following:
 - a. 6 NYCRR 613.4(a) for failing to keep daily bottom water level records for the purpose of leak detection for underground PBS tanks 1 and 3;
 - b. 6 NYCRR 613.3(d) for failing to maintain the dispenser sumps associated with underground PBS tanks 1, 2, and 3, and failing to properly maintain the tank top sump for underground PBS tank 1;
 - c. 6 NYCRR 614.14(g) for failing to have proper overfill protection for underground PBS tanks 1, 2, and 3;
5. holding that respondents Three Son Petroleum Inc and Tariq Mahmood are jointly and severally liable for the violations noted in paragraph 4 (a - c);
6. directing respondent Three Son Petroleum Inc to pay a civil penalty of one thousand five hundred dollars (\$1,500) for the violations referenced in paragraph 3 within thirty (30) days of service of the Commissioner's order on respondents;
7. directing respondents Three Son Petroleum Inc and Tariq Mahmood to pay a civil penalty of seven thousand five hundred dollars (\$7,500) for the violations referenced in paragraph 4 (a - c) within thirty (30) days of service of the Commissioner's order on respondents;

8. holding respondents Three Son Petroleum Inc and Tariq Mahmood jointly and severally liable for the payment of the civil penalty of seven thousand five hundred dollars (\$7,500) referenced in paragraph 7;
9. directing respondent Three Son Petroleum Inc to submit a complete registration renewal application to the Department for the facility within seven (7) days of service of the Commissioner's order on respondent together with the applicable registration fees;
10. directing respondents Three Son Petroleum Inc and Tariq Mahmood to submit the following within thirty (30) days of service of the Commissioner's order on respondent:
 - A. photographs and documentation certifying the dispenser sumps associated with underground PBS tanks 1, 2 and 3 are empty and clean;
 - B. photographs and documentation certifying that the broken cover to the tank top sump associated with underground PBS tank 1 has been replaced;
 - C. thirty days of properly reconciled inventory records that include proper tank bottom water measurements for underground PBS tanks 1, 2 and 3; and
 - D. documentation that underground PBS tanks 1, 2 and 3 have overfill prevention equipment (i.e. auto shut-off valve, high level overfill alarm or ball-float valve) installed;
11. directing respondents to submit the penalty payment and all other submissions to the following:

Dusty Renee Tinsley, Esq.
Assistant Regional Attorney
NYSDEC Region 4
1130 North Westcott Road
Schenectady, New York 12306; and
12. directing such other and further relief as the Commissioner may deem necessary and appropriate.

/s/

Dated: December 7, 2015
Albany, New York

Michael S. Caruso
Administrative Law Judge