

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violation of Articles 3, 17, 19 and
71 of the Environmental
Conservation Law of the State of
New York and Title 6 of the
Official Compilation of Codes,
Rules and Regulations of the State
of New York and Article 12 of the
Navigation Law, by

RULING

(July 21, 2005)

**Gasco-Merrick Road Gas Corp. and
Juan M. Romero,**

DEC No. D1-1155-11-04

Respondents.

The complaint in this matter alleges that four respondents, Gasco-Merrick Road Gas Corp., Juan M. Romero, Reshma Realty, Inc., and Lalita Kapour, as owners or operators of a petroleum bulk storage facility located at 3215 Merrick Road, Wantagh, New York, violated the Environmental Conservation Law, the Navigation Law and related regulations. Alleged violations include failure to report petroleum discharges, failure to conduct tank testing, recordkeeping violations and related allegations.

Prior to referral of the case to the Office of Hearings and Mediation Services for hearing, respondents Reshma and Kapour entered into an Order on Consent with the Department (Order on Consent, Case No. D1-1155-11-04, dated May 11, 2005).

By letter dated June 20, 2005, attorney for Gasco-Merrick Road Gas Corp. (Gasco), and Juan M. Romero (Romero; jointly, the Respondents) requested leave to interpose a cross claim against Reshma Realty, Inc. (Reshma), and Lalita Kapour (Kapour).

As noted by the DEC Staff attorney's opposition letter dated June 24, 2005, the Respondents acknowledge that the Department's enforcement hearing regulations, title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, part 622, do not provide for cross claims or impleaders. In Staff's view, this requires denial of Respondents' motion. As noted in Staff's response, a claim for indemnification may be pursued in a separate judicial civil action. However, if in Respondents' view, defense of this administrative proceeding requires examination of Reshma or Kapour, Respondents may subpoena witnesses to appear for testimony, subject to any

objections that may be interposed. See 6 NYCRR 622.2(w) and 622.7(d).

Ruling: Respondents' motion for leave to cross claim against Reshma Realty, Inc. (Reshma), and Lalita Kapour (Kapour) is denied.

Albany, New York
July 21, 2005

_____/s/
Kevin J. Casutto
Administrative Law Judge

To: Marvin E. Kramer, Esq.
Marvin E. Kramer & Associates, P.C.
400 Post Avenue, Suite 402
Westbury, New York 11590

Benjamin A. Conlon, Esq.
Associate Attorney
NYSDEC Division of Environmental Enforcement
625 Broadway [14th Floor]
Albany, New York 12233-5550