

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

In the Matter of the Alleged Violations of Article 12 of the New York State Navigation Law and Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"),

ORDER

DEC File No.
R2-20101015-376

- by -

**DEODATH RAMCHARAN (a/k/a DAVID
HAPPY) and SUPER DEVELOPMENT
CORP.,**

Respondents.

This administrative enforcement proceeding concerns the discharge of petroleum from a 275 gallon aboveground storage tank ("tank") at a residence at 548 Hinsdale Street, Brooklyn, New York ("residence" or "548 Hinsdale").

In this proceeding, staff of the New York State Department of Environmental Conservation ("Department") alleges that the excavation activities of respondents Deodath Ramcharan (a/k/a David Happy) and Super Development Corp., at an adjacent property at 552 Hinsdale Street ("552 Hinsdale"), were the cause of the discharge. In April 2005, respondents' excavation activities at 552 Hinsdale created a crack in the rear corner of 548 Hinsdale and displaced the residence's side wall. Department staff alleges that, as a result of this damage to 548 Hinsdale, the fill and vent pipes of the tank at 548 Hinsdale were displaced, and stress was placed on the tank's supply line connection. Following a delivery of No. 2 heating oil to the residence on August 23, 2005, petroleum discharged from the tank, and onto the basement floor. From there the petroleum seeped into the subsurface environment.

Department staff commenced this proceeding against respondents by service of a motion for order without hearing, in lieu of complaint, dated October 19, 2010, by certified mail. Respondents opposed the motion in papers dated November 9, 2010. The matter was assigned to Administrative Law Judge ("ALJ")

Edward Buhrmaster who, by ruling dated January 7, 2011, denied the motion for order without hearing. The ALJ deemed that the moving and responsive papers would be the complaint and answer, respectively. A hearing was subsequently held on March 11, 2011, followed by the submission of closing briefs by Department staff and respondents.

Department staff, in its motion, alleges that respondents:

- (1) illegally discharged petroleum at the residence beginning on August 23, 2005, in violation of section 173 of the Navigation Law; and
- (2) failed to immediately contain the discharge since August 23, 2005, in violation of section 176 of the Navigation Law and 17 NYCRR 32.5.

By way of relief, Department staff requests an order imposing a civil penalty of fifty thousand dollars (\$50,000). Department staff also requests that respondents be directed to fully investigate and remediate the discharge in accordance with a work plan approved by Department staff.

The ALJ prepared the attached hearing report, in which he finds respondents liable for the spill and recommends imposition of a civil penalty of fifty thousand dollars, of which forty thousand dollars would be suspended. This suspension would be contingent upon:

- (1) respondents' timely payment of the non-suspended portion of the penalty;
- (2) respondents' timely submission of an approvable work plan for the investigation and remediation of the petroleum discharge; and
- (3) respondents' timely implementation of the work plan, as approved by Department staff (see Hearing Report, at 20 [Recommendation 3]).

I adopt the ALJ's hearing report as my decision in this matter, subject to the following comments.

The ALJ concluded that structural damage resulting from respondents' excavation activities at 552 Hinsdale, "at the least," contributed to the petroleum discharge at 548 Hinsdale (Hearing Report, at 10). Respondents contend that it is inconclusive how the discharge occurred. Respondents argue that the discharge of petroleum may have resulted from the age of the

tank, and corrosion in the tank and the fuel supply line, and not their excavation activities. However, the age of the tank at 548 Hinsdale, and any corrosion were not, on this record, shown to be factors in the discharge.

Respondent Super Development Corp. was hired by Sean and Brandi Woodall (the "Woodalls"), the owners of 552 Hinsdale, to undertake excavation on their property as a first step toward the construction of a new building. The excavation activities structurally damaged 548 Hinsdale and, based on this record, "but for" those activities, the leak would not have occurred.

Respondent Deodath Ramcharan (a/k/a David Happy) is the president of Super Development Corp. He described Super Development Corp. as one of his companies that he uses for his "personal use" (Tr, at 157). From his testimony, respondent Ramcharan was actively involved in the construction activities at 552 Hinsdale (see, e.g., Tr, at 158 [indicating his involvement in this type of construction activity]; Tr, at 161-162, 167 [describing his involvement in the excavation activities at 552 Hinsdale prior to the damage to 548 Hinsdale, and the measures he undertook to sturdy the damaged residence]).

In reviewing the record, including but not limited to the testimony of the Department's two engineering geologists, I concur with the ALJ that the Department sustained its burden of proof by a preponderance of the evidence (see 6 NYCRR 622.11[c]), and that respondents are jointly and severally liable. In light of respondent Ramcharan's direct involvement in the excavation activities that led to the damage to 548 Hinsdale, personal liability is properly found, in addition to liability of the corporate entity (see, e.g., Matter of Galfunt and Hudson Chromium Company, Inc., Order of the Commissioner, May 5, 1993, at 2 [citing United States v Park, 421 US 658 (1975)]; see also State v Markowitz, 273 AD2d 637, 642 [3rd Dept], lv denied, 95 NY2d 770 [2000]).

Department staff alleges that both violations (the illegal discharge and the failure to contain it) occurred from August 23, 2005, the date of the discharge, to October 19, 2010, the date of staff's motion for order without hearing. The ALJ, however, determined that the discharge was a one-day event and did not continue thereafter (see Hearing Report, at 14-15). Based on the factual circumstances in this proceeding, I concur with the ALJ. The ALJ also determined that respondents' failure to contain the discharge should be deemed to run from October 12, 2006 (and not August 23, 2005). The ALJ made this

determination based on a letter dated September 26, 2006 from Department staff to respondents in which Department staff alleged that respondents had committed the violations alleged in this matter, identified respondents as responsible parties, and directed them to commence removal of the contaminated soil and groundwater at the residence by October 12, 2006 (see Hearing Report, at 15; Hearing Exhibit 12, at 1). Respondents were not immediately aware of a discharge that occurred in the basement of the neighboring residence, which they did not own, where they were not onsite, and to which they did not have a right of access. Under the circumstances here, the ALJ's identification of October 12, 2006 as the "start date" for respondents' cleanup obligation is appropriate.

Department staff sets forth several aggravating penalty factors including respondents' lack of cooperation, the facts that the impacted site is a personal residence and the unremediated discharge may be having adverse health impacts on the local residents, and the failure of respondents to perform the necessary work even though they were given ample opportunity to do so (see, e.g., Hearing Transcript, at 154-55; Hearing Exhibit 11). Accordingly, I conclude that Department staff's penalty request for a civil penalty of fifty thousand dollars is appropriate. However, I agree with the ALJ's recommendation that forty thousand dollars of the penalty should be suspended, contingent on the conditions that the ALJ suggests.

In addition, the remedial relief requested (preparation and implementation of a work plan to investigate and remediate the discharge) is authorized and appropriate.

As noted, respondents do not have any right to access the residence, but can do so only with the permission of the present owner, Josephine Otoo. Respondents shall undertake good faith efforts to obtain access to 548 Hinsdale from her. If access is denied or unduly restricted, respondents are directed to immediately contact Department staff in order for staff to arrange access. In addition, the Woodalls, who are the owners of the neighboring property (552 Hinsdale), signed a stipulation with the Department to clean up and remove the discharge at 548 Hinsdale, in accordance with a corrective action plan set forth in the stipulation (see Hearing Exhibit 13). Based on the record before me, the Woodalls have not yet taken any corrective action or otherwise complied with the stipulation. To ensure proper coordination of any investigative and remediation activity, Department staff is directed to discuss with

respondents and the Woodalls appropriate coordination of cleanup efforts at 548 Hinsdale.

Subsequent to the spill, Josephine Otoo, the owner of 548 Hinsdale, had the basement floor torn up in order to replace a sewer line that ran beneath her house to the street (Tr, at 56-59). Ms. Otoo did not mention the prior petroleum spill to the company performing the work related to the sewer line. If respondents, in the course of implementing the work plan to remediate the site, believe that the sewer pipe repair activity significantly aggravated the impacts of the petroleum spill or has complicated cleanup efforts, respondents are to immediately advise Department staff and discuss any appropriate modifications to the work plan. However, this does not, in and of itself, relieve respondents of their cleanup responsibilities at the residence.

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

- I. Based upon the hearing record, respondents Deodath Ramcharan (a/k/a David Happy) and Super Development Corp. are adjudged to have violated:
 - A. Navigation Law § 173, by illegally discharging petroleum at a residence at 548 Hinsdale Street, Brooklyn, New York; and
 - B. Navigation Law § 176 and 17 NYCRR 32.5, by failing to contain the illegal discharge or to take those measures necessary for the cleanup of the discharge.
- II. Respondents Deodath Ramcharan (a/k/a David Happy) and Super Development Corp. are assessed, jointly and severally, a civil penalty in the amount of fifty thousand dollars (\$50,000), of which forty thousand dollars (\$40,000) is suspended upon the condition that respondents: timely pay the non-suspended portion of the civil penalty; timely submit an approvable work plan to Department staff for the investigation and remediation of the petroleum discharge; and timely implement the work plan, as approved by Department staff.

The non-suspended portion of the penalty (ten thousand dollars [\$10,000]) is due and payable within thirty (30) days of service of this order upon respondents. Payment of the civil penalty shall be by cashier's check,

certified check, or money order payable to the order of the "New York State Department of Environmental Conservation," and delivered to the Department at the following address:

John K. Urda, Esq.
Assistant Regional Attorney
New York State Department of Environmental
Conservation, Region 2
47-40 21st Street
Long Island City, New York 11101

If respondents fail to comply with any of the terms and conditions of this order, the suspended portion of the penalty (that is, forty thousand dollars [\$40,000]) shall immediately become due and payable and shall be submitted to Department staff in the same form and to the same address as the non-suspended portion of the penalty.

- III. Within thirty (30) days of service of this order upon respondents, respondents shall submit to Department staff an approvable work plan for the investigation and remediation of the discharge. The work plan shall include a schedule of milestone dates for completion of the tasks in the work plan. Department staff is directed to discuss with Sean and Brandi Woodall, who previously signed a stipulation to cleanup the spill at 548 Hinsdale, and respondents regarding any appropriate coordination of the work. Following Department staff's written approval of the work plan, respondents shall implement the approved work plan and timely complete all steps called for in the work plan. Upon completion of the work, respondents shall immediately notify Department staff.
- IV. All communications from respondents to the Department concerning this order shall be directed to John K. Urda, Esq., at the address set forth in paragraph II of this order.

V. The provisions, terms, and conditions of this order shall bind respondents Deodath Ramcharan (a/k/a David Happy) and Super Development Corp., and their agents, successors, and assigns in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Joseph J. Martens
Commissioner

Dated: July 24, 2011
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1550

In the Matter

- of -

Alleged Violations of Article 12 of
the New York State Navigation Law and
Title 17 of the Official Compilation of
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State of New York ("NYCRR")

- by -

**DEODATH RAMCHARAN (a/k/a DAVID HAPPY)
and SUPER DEVELOPMENT CORP.,**

Respondents.

NYSDEC FILE NO. R2-20101015-376

HEARING REPORT

- by -

/s/

Edward Buhrmaster
Administrative Law Judge

PROCEEDINGS

This enforcement matter was initiated by service of a motion for order without hearing (Exhibit No. 1) by Region 2 Staff of the Department of Environmental Conservation ("DEC"). Staff's papers, dated October 19, 2010, alleged that Sean and Brandi Woodall, Deodath Ramcharan and Super Development Corporation illegally discharged petroleum at 548 Hinsdale Street, Brooklyn, and failed to immediately undertake containment of the discharge, as further discussed below. DEC Staff alleged that both violations continued from August 23, 2005, through October 19, 2010, the date of the motion.

The Woodalls did not formally oppose the motion. After discussions with DEC Staff, they entered into a stipulation (Exhibit No. 13) in December, 2010, indicating their agreement to clean up and remove the discharge by taking steps consistent with a corrective action plan they were to submit to DEC.

Mr. Ramcharan, individually and as president of Super Development Corp., opposed the motion in papers dated November 9, 2010 (Exhibit No. 2), which he sent to this office under a cover letter dated November 15, 2010. By letter of November 22, 2010, DEC Staff counsel John K. Urda requested that an administrative law judge ("ALJ") be assigned to decide the motion as to these respondents. I was then given this assignment by DEC Chief ALJ James T. McClymonds.

In a seven-page ruling dated January 7, 2011 (Exhibit No. 3), I denied the motion for order without hearing as to both Mr. Ramcharan and Super Development Corp. I found that summary judgment on behalf of DEC Staff would not be appropriate because there was a triable factual issue concerning the cause of the petroleum discharge that had occurred.

Because the motion was denied, I ordered that the moving and responsive papers be deemed the complaint and answer, consistent with Section 622.12(e) of Title 6 of the New York Codes, Rules and Regulations ("NYCRR"). I also said that I would schedule a hearing, the date, time and location of which were established with the parties and then confirmed in a hearing notice dated February 14, 2011 (Exhibit No. 4).

The hearing went forward as scheduled on March 11, 2011, at DEC's Region 2 office, 47-40 21st Street, Long Island City. Mr. Urda, an assistant regional attorney, appeared on behalf of DEC Staff. Mr. Ramcharan and Super Development Corp. (referred to

collectively in this report as "the respondents") were represented by Raymond W. Verdi, Esq., an attorney whose office is in Patchogue.

DEC Staff presented as witnesses Josephine Otoo, who resides at 548 Hinsdale Street, as well as two Region 2 engineering geologists, Jeffrey Vought and Raphael Ketani, whose duties are to inspect, monitor, and supervise the investigation and remediation of petroleum-contaminated sites throughout New York City. Mr. Ramcharan testified on behalf of himself and Super Development Corp., and also called as a witness Michael Drake, a professional engineer in Babylon. On behalf of DEC, Mr. Vought and Mr. Ketani responded to the spill on August 24, 2005, while Mr. Drake, at the request of Mr. Ramcharan, inspected the oil tank and foundation at 548 Hinsdale Street on May 14, 2007.

The record of the adjudicatory hearing includes 19 numbered exhibits and a 231-page transcript that includes all the witness testimony. A list of the hearing exhibits is attached to this report.

The hearing concluded on March 11, 2011. By letter dated April 6, 2011, I confirmed the parties' agreement that closing briefs be submitted by April 29, 2011. Timely briefs were received from Mr. Urda (on behalf of DEC Staff) and Mr. Verdi (on behalf of the respondents). Mr. Urda submitted a transcript errata sheet dated April 5, 2011, and Mr. Verdi submitted a transcript errata sheet dated April 28, 2011. The parties' proposed corrections have been made to the transcript, there being no objection to them. Also, on June 10, 2011, I proposed additional corrections of my own, to which there has been no objection. These corrections have also been made to the transcript.

POSITIONS OF THE PARTIES

Position of DEC Staff

DEC Staff alleges that Sean and Brandi Woodall, owners of 552 Hinsdale Street, Brooklyn, retained respondents Deodath Ramcharan (a/k/a David Happy) and Super Development Corp. to conduct excavation and construction activities on their property. Subsequently, on August 23, 2005, Staff says there was a fuel oil spill in the basement of 548 Hinsdale Street, an adjacent property, due to the forceful separation of a boiler supply line from a 275-gallon aboveground storage tank.

DEC Staff maintains that shoddy excavation work performed by Mr. Ramcharan and Super Development Corp. at 552 Hinsdale Street caused the exterior side wall of the house at 548 Hinsdale Street to separate outward from the rest of the building, while also creating a crack that ran from the basement to the roof at the building's back corner. Staff alleges that the oil tank in the basement of 548 Hinsdale Street was pulled along with the wall, causing it to tilt and thereby stressing the supply line connection. Staff further alleges that due to the force associated with a fuel oil delivery on August 23, 2005, the connection between the tank and the supply line broke, releasing the oil onto the basement floor, and from there into the sandy subsurface environment.

The respondents are charged with illegally discharging petroleum, in violation of Navigation Law Section 173, and failing to immediately undertake containment of the petroleum discharge, in violation of Navigation Law Section 176 and 17 NYCRR 32.5.

By way of relief, DEC Staff requests an order imposing a \$50,000 penalty, for which respondents Ramcharan and Super Development Corp. would be jointly liable. Staff's proposed order would also direct the respondents to fully investigate and remediate the discharge according to a DEC-approved work plan.

Position of Respondents Deodath Ramcharan and Super Development Corp.

The respondents deny DEC Staff's charges, and request that the case against them be dismissed.

They acknowledge being retained by Sean and Brandi Woodall to conduct excavation and construction activities at 552 Hinsdale Street. Also, they acknowledge that during their excavation work on or about April 10, 2005, soil under the rear corner of 548 Hinsdale Street subsided or fell into the excavation hole, thereby creating a crack in the rear wall of the house at that address. They claim that, to address the situation, they immediately braced up the foundation and backfilled to support it.

The respondents agree that on August 23, 2005, a fuel oil delivery was made to 548 Hinsdale Street, and that immediately following this delivery there was a fuel oil spill in the basement at that address due to the separation of the fuel

supply line from the storage tank. However, they say it is inconclusive how the discharge occurred, and that DEC Staff has not demonstrated by clear and convincing evidence that they were responsible for it. They contend that the discharge was most likely caused by a leak in the supply line that occurred during the fill process, but which they attribute to internal corrosion at the fitting between the supply line and the tank.

Should the respondents be found liable for the alleged violations, they say that no civil penalties should be assessed against them. They claim that due to uncertainty about how the petroleum discharge occurred, they had no clear responsibility to contain it. Finally, they argue that they should not be required to duplicate the efforts of the Woodalls, who have already agreed to clean up and remove the discharge pursuant to their stipulation with DEC Staff.

FINDINGS OF FACT

1. Super Development Corp. is an active domestic business corporation and registered as such with the New York State Department of State. (Transcript (T): 149.) It performs construction and renovation work and has a business address of 1928 Fulton Street, Brooklyn. (T: 156 - 157.)

2. Deodath Ramcharan is the president of Super Development Corp. (T: 157.) He has been in the building trade for 39 years, including 19 years in the United States. (T: 157.) Friends and co-workers sometimes refer to him as David Happy, in reference to another construction company, Happy Corporation, that he also operates. (T: 157, 186.)

3. Sean and Brandi Woodall own property at 552 Hinsdale Street, Brooklyn. They retained Mr. Ramcharan and Super Development Corp. to construct an apartment house there, and work began in April, 2005, with Mr. Ramcharan acting as construction manager. (T: 158.)

4. Initial activity involved excavation of the vacant property with machines to create a basement for the new house. (T: 159.) Prior to this excavation, shoring was installed to prevent soil beneath the neighboring two-story brick building, at 548 Hinsdale Street, from collapsing into the hole. (T: 160.)

5. During excavation for back stairs leading into the basement of the new house, the shoring was exceeded. Soil against and under the rear corner of the foundation at 548

Hinsdale Street started to fall into the excavated area. The subsidence of the soil, combined with the vibration of the excavation equipment, created a crack in the rear corner of the building at 548 Hinsdale Street, as well as displacement of its side wall facing 552 Hinsdale Street. (T: 162 - 163.)

6. The structural crack at 548 Hinsdale Street, as much as a few inches wide, ran up the back wall of the house from the foundation to the roof. There was some associated settlement of the house's foundation as well as damage to a covered wooden deck at the back of the house, which became separated from the house itself. (T: 163 - 165.)

7. At the time it happened, Mr. Ramcharan accepted responsibility for the damage at 548 Hinsdale Street, and told the owner of the house, Josephine Otoo, that he would fix the crack after his excavation was completed and construction of the new building reached the second floor. (T: 168 - 169.) In the meantime, to sturdy the structure, Mr. Ramcharan installed new shoring and backfilled behind it with soil that had collapsed into the hole. (T: 167.)

8. The crack remained unrepaired on August 23, 2005. On that date, Madison Oil Company made a delivery of No. 2 heating oil to 548 Hinsdale Street. (T: 42 - 44.) The delivery was made in the morning through a fill port (shown in a photograph received as Exhibit No. 8) in the side of the house facing 552 Hinsdale. The port was connected to the oil tank, located in the rear corner of the basement, by a fill pipe running through the basement wall. Also running through the wall was a vent pipe (also shown in Exhibit No. 8). A vent pipe allows air in the tank to be expelled as it is replaced by oil.

9. During the evening of August 23, 2005, Ms. Otoo received a call at work from her mother, who said she and a friend had detected an oil smell from the basement and, upon investigation, had discovered an oil leak that they could not stop. (T: 45 - 46.) This had prompted them to call the city fire department, which ordered the house evacuated. (T: 46.)

10. In early September 2005, the city buildings department ordered the house at 548 Hinsdale Street vacated until it could be certified as structurally sound. (See Exhibit No. 11, a DEC spill report form, page 2.) In October 2005, Mr. Ramcharan repaired the outside of the house, fixing the crack. The repairs involved removing portions of the side and rear walls on top of the foundation, replacing the brick with block, filling

with cement, and reattaching the rear deck. (T: 173 - 175.) Ms. Otoo did not move back to the house until two years after the oil discharge, while she refinanced and did some work on the house herself. (T: 54 - 55.)

11. The discharge at 548 Hinsdale Street originated from a broken connection between the oil tank and the supply line to the fuel oil burner in the basement (as shown in photographs received as Exhibits No. 9 and 10). Embedded in the basement flooring, the supply line ran along the bottom of the basement wall immediately adjacent to 552 Hinsdale Street. (T: 73, 130.) The metal of the supply line, the weakest connection to the tank, was about a quarter of an inch thick, whereas the fill and vent lines, which ran through the house's exterior wall, consisted of stronger one-inch solid steel pipe. (T: 78.)

12. The displacement of the building's side wall, attributable to the excavation at 552 Hinsdale Street, likely caused a similar displacement of the fill and vent pipes, which would have pulled the oil tank along, causing it to tilt slightly. That tilt would have stressed the tank's supply line connection, causing it to break when the tank was pulled upright by the sudden influx of oil at the time of the delivery. (T: 80 - 81.) The delivery likely precipitated the spill, though the spill was not observed as it happened.

13. At the time of the spill, the floor of the basement under the tank was concrete, with some areas of exposed soil. (T: 84.) The basement flooring was likely compromised by the slippage of soil from around the shoring the respondents had installed between 548 and 552 Hinsdale. That slippage, accompanied by movement of the side wall at 548 Hinsdale Street, would have contributed to the stress on the supply line connection to the storage tank. (T: 125 - 126.)

14. The fire department alerted DEC to the spill at 548 Hinsdale Street during the evening of August 23, 2005. Explaining the spill, the fire department said there was a crack in the line from the oil tank to the burner, and that the oil leaked into the ground through a crack in the floor. (Exhibit No. 11, page 1.)

15. The oil passed quickly from the basement into the subsurface soil. Responding to the spill on August 24, 2005, DEC Staff members Jeffrey Vought and Raphael Ketani smelled pungent oil vapors and noticed black staining on the basement floor. (T: 85, 140.) As there was no free product, they made

no effort to place absorbent material. The oil, being thin, with a viscosity like that of water, would have passed quickly through the concrete flooring, even in the absence of cracks. (T: 141.)

16. The water table in the area of the spill is close to the ground surface. Any oil traveling downward would eventually reach the water table, dissolve into it, and spread on top of it. (T: 142 - 143.)

17. The fire department determined that 100 gallons were discharged from the oil tank (Exhibit No. 11), but it is unknown how this was determined. Ms. Otoo could not recall how much oil she had ordered for delivery, and no other evidence was produced on this point.

18. On August 24, 2005, when Mr. Ketani first visited 548 Hinsdale Street, daylight could be seen through the crack in the basement wall, and there was another crack running along the bottom of the basement wall where it met the basement floor. The oil tank was resting in an upright position, and the fuel supply line was disconnected from the tank and bent over at a 90 degree angle. (T: 105 - 108.)

19. Responding to inquiries by DEC Staff, Mr. Ramcharan called Mr. Ketani on June 23, 2006, advising him that that the wall of the house at 548 Hinsdale Street had been jacked up and put back in place. (T: 112.)

20. On June 27, 2006, Mr. Ketani met Mr. Ramcharan and Ms. Otoo at 548 Hinsdale Street. Not only was the wall back in place and recemented, the back of the house had new porch roofing, and the wall crack had been repaired, though there was still a crack between the basement floor and the wall about 15 feet away from the oil tank. (T: 113.)

21. After meeting Mr. Ramcharan at the site on September 12, 2006, Mr. Ketani sent him a letter on September 26, 2006, advising him that he and Super Development Corp. were responsible for the spill at 448 Hinsdale Street. The letter (Exhibit No. 12) directed them "to commence with the removal of the contaminated soil and groundwater" by October 12, 2006. The ordered work included taking soil and groundwater endpoint samples to determine the extent of contamination, and removing all contaminated soil "to the extent practical" without endangering the stability of the home. The letter instructed the respondents to provide written notification bearing a

postmark no later than October 12, 2006, that the work had begun. However, no such notification was provided. (T: 119 - 121.)

22. On October 5, 2006, Mr. Ketani received a call from Mr. Ramcharan's office assistant, who asked what was needed to get the spilled oil cleaned up. Mr. Ketani explained to her that she had to call a cleanup company, and described what the cleanup company would do, as well as the process for getting the spill cleaned up to the point where the case could be closed. She said she would start calling cleanup companies immediately, and Mr. Ketani asked that she keep him informed. (T: 121 - 122; Exhibit No. 11, page 3.)

23. On October 11, 2006, Mr. Ketani received a call from Jarrett Anderson, an attorney for Mr. Ramcharan and Super Development Corp. Mr. Anderson said that Artie Baldwin of Trade Winds, an environmental investigation and remediation company, had been to 548 Hinsdale Street and had done an initial inspection. Mr. Ketani told Mr. Anderson that DEC wanted two borings done in the vicinity of the spill, and groundwater samples taken. Mr. Anderson agreed that this would be done, and Mr. Ketani said that DEC would let Trade Winds decide what would be the best approach to spill remediation, as digging might not be advisable, given the previous movement of the wall. (T: 122 - 123; Exhibit No. 11, pages 3 and 4.)

24. On October 25, 2006, Mr. Ketani called Mr. Baldwin, who confirmed that he had taken a look at the site. He said he would make a proposal to Mr. Ramcharan for doing two borings and taking two soil and two groundwater samples. (T: 123; Exhibit No. 11, page 4.)

25. On November 10, 2006, Mr. Ketani again called Mr. Baldwin, who said that Mr. Ramcharan never hired him to do the investigation and remediation work. (T: 123 - 124; Exhibit No. 11, page 4.)

26. On November 21, 2006, Mr. Ketani received a call from USA Environmental, which said it had been hired by Mr. Ramcharan. USA Environmental asked about the contamination at 548 Hinsdale Street, and Mr. Ketani discussed the history of the site, suggesting that two borings be done near the broken fuel line and the tank. Mr. Ketani proposed that soil samples and one groundwater sample be taken, and the representative of USA Environmental agreed. (T: 124; Exhibit No. 11, page 4.)

27. DEC Staff never received any work plans or any results of investigatory or remedial activities at 548 Hinsdale Street. As of the hearing date, the spill had not been investigated or remediated. (T: 124.)

28. According to the corrective action plan attached to their stipulation with DEC Staff (Exhibit No. 13), the Woodalls were to have submitted a remedial investigation work plan detailing the scope of work proposed to investigate the nature and full extent of the contamination caused by the spill both on and off the site. The plan was to have been submitted within 30 days of the stipulation's effective date of December 22, 2010.

29. As of the hearing date, no plan had been submitted, but DEC Staff said it was working with the Woodalls and had not commenced any enforcement action against them. In the meantime, DEC Staff said it was pursuing Mr. Ramcharan and Super Development Corp. as the parties primarily responsible for the discharge. (T: 14 - 16.)

30. Immediately after the discharge on August 23, 2005, the oil delivery company replaced the broken boiler supply line with a temporary line suspended from the ceiling, so the house could have hot water. (T: 58; Exhibit No. 11, page 1.)

31. Since returning to her house, Ms. Otoo has converted from oil to gas heat, and torn up the basement floor to replace a sewer line that ran beneath her house to the street. (T: 56 - 59.) When the sewer line was dug up and replaced, Ms. Otoo did not mention to the company performing the work that there might be some issue of oil having seeped into the ground, and she does not recall any indication or notation made by the company about soil contamination that it might have encountered during its digging. (T: 57 - 58.)

DISCUSSION

In their closing brief, respondents Deodath Ramcharan and Super Development Corp. concede that following a fuel oil delivery to 548 Hinsdale Street on August 23, 2005, there was a spill in the basement at that address due to the separation of the fuel supply line from the 275-gallon aboveground fuel storage tank. The respondents do not agree with DEC Staff about the cause of the separation, or about who is responsible for the discharge. According to DEC Staff, the separation was due to stresses on the tank and its piping system attributable to the respondents' excavation at the neighboring property, coupled

with the force of the delivery itself. The respondents deny that their activities had anything to do with the spill.

- Liability for Violations

I conclude that damage resulting from the respondents' activities did, at the least, contribute to the petroleum discharge, and that on that basis, the respondents may be held responsible for the discharge, even if they did not discharge the petroleum themselves. Super Development Corp. was hired by the Woodalls to do the excavation as a first step toward the construction of a new building at 552 Hinsdale Street, and all the evidence suggests that Mr. Ramcharan, Super Development's president, personally managed the onsite work. Because the shoring between 548 and 552 Hinsdale was exceeded and soil under the rear corner of 548 Hinsdale subsided or fell into the excavation hole, there was structural damage to Ms. Otoo's house, as described in the findings of fact, for which Mr. Ramcharan acknowledged responsibility. Because of this damage at locations close to the oil tank in the rear of the basement, one can infer that it stressed the connection between the tank and the supply line, though the particular cause of the stress is difficult to discern.

As part of its case, DEC Staff presented two of its engineering geologists who respond to and investigate reports of prohibited petroleum discharges. The first, Jeffrey Vought, conducted one site visit, on August 24, 2005, as the initial lead investigator. The second, Raphael Ketani, accompanied Mr. Vought on August 24, 2005, and later became the lead investigator himself, returning to the site on June 27, 2006, at which time he took various photographs received as Exhibits No. 6 - 10.

Mr. Vought theorized that the displacement of the side wall pulled the oil tank, which was next to it, at an angle, and that the subsequent delivery shifted the tank back to an upright position, severing its connection to the supply line. (T: 79 - 81.) On the other hand, Mr. Ketani suggested that the break occurred due to movement of the basement flooring in which the supply line was embedded. (T: 130 - 131.) As he explained, because the excavator had dug below the shoring, the loose, sandy soil poured out from underneath and behind the shoring, and "continued to move" in the direction of the new construction at 552 Hinsdale. (T: 125 - 126, 129 - 130.) This shifting, he said, lessened the support for the floor, so that when the oil

delivery occurred, it stressed the supply line, which then broke. (T: 126.)

Mr. Ketani testified that he examined the end of the disconnected line and it felt solid, with no cracks, and was jagged, "as if it had been broken off," rather than subject to brittle failure. (T: 213.) He said that the line must have separated from the tank by a lot of force because he could not bend it himself. (T: 215.) In fact, he testified that on August 24, 2005, during his first inspection, he stood on top of the line, and, bouncing up and down on it, could not make it budge. (T: 222.)

At the request of Mr. Ramcharan, Mr. Drake, a professional engineer, inspected the foundation and oil tank at 548 Hinsdale Street on May 14, 2007, and reported his findings in a letter to Mr. Ramcharan dated June 14, 2007 (Exhibit No. 14), which was accompanied by photographs (Exhibits No. 15 - 19) that Mr. Drake took on that date. In March, 2008, the report was furnished to Mr. Ketani, who disagreed with Mr. Drake's determination as to how the spill occurred. (See Ketani's note on page 4 of Exhibit No. 11.)

In his report, Mr. Drake wrote that it appeared that the oil discharge resulted from a loose fitting at the supply side pipe of the tank. As DEC Staff points out, there is no direct evidence to support this conclusion; in fact, the jagged edge of the supply line suggests a forceful separation, as does the observation in Mr. Drake's report that the supply side pipe to the oil-fired burner appeared to be bent far away from the lower tank outlet. In fact, Mr. Ketani estimated that the supply line was separated from the tank by at least four inches. (T: 209 - 210.)

The respondents contend it is probable that the fire department bent the supply line away from the tank to get free access to the tank bottom to insert a threaded plug. However, no witness observed the plug's insertion, or explained how it was done. Also, Mr. Ketani said he did not know what equipment the firefighters carry with them, or why they would have moved the supply pipe, since judging from the photographs he and Mr. Drake took, there was no reason to do so. (T: 222 - 223.)

Mr. Drake wrote that at the time of his observations, the fill and vent pipes had no signs of stress and strain such as bending or kinked metal, or even flaking of the old original paint, which would easily be flaked off at the high strain areas

if the pipes had been pulled or pushed. Mr. Ketani testified he was not surprised by these findings, noting that if the side wall had moved, it would have moved with the fill and vent pipes embedded in the wall, so they would not have shown much change in their appearance. (T: 214.)

Mr. Drake noted in his report that four months elapsed between the excavation at 552 Hinsdale Street and the petroleum discharge at 548 Hinsdale Street, and that the occupants of 548 Hinsdale lived continuously in their residence during this time, using the oil-fired domestic hot water heater, which indicates that the oil tank was working fine and without leaks. DEC Staff does not disagree; according to Staff, the discharge occurred in conjunction with the fuel delivery on August 23, 2005. Mr. Ketani said that from his observation of the underside of the tank, there was some surficial rusting, but it did not affect the integrity of the metal. He also said he did not see any signs of oil dripping either on the concrete floor below the tank, or where the fuel line had been connected to the tank. (T: 208 - 209.)

Finally, Mr. Drake wrote that the occupants of 248 Hinsdale Street were performing interior renovations during the four months between the excavation and the oil discharge, and that these renovations may have caused the leak. According to Mr. Drake, the renovations were reported on August 24, 2005, by a city building inspector; however, that inspector did not testify at the hearing, and nothing was produced to confirm any renovations taking place close to the time of the discharge. Ms. Otoo testified on direct examination that up until the time of the oil discharge, there was no structural or renovation work going on in her house. (T: 36.) On cross-examination, she admitted that in 2002, she started some work to enlarge a second floor bedroom at the back of the house, but added that the person who was doing the work passed away in 2003, at which point there was just sheet rock and framing. (T: 39 - 40.)

At the hearing, Mr. Drake took the position that the most likely cause of the discharge was corrosion inside the fuel storage tank and its supply line. He theorized that this corrosion, particularly in the fitting areas, resulted from condensed water building up inside the tank, and the tank not being inspected and serviced every year, drained or replaced. His sense was that with the corrosion being present, the fuel delivery on August 23, 2005, pushed the nipple away from the tank and allowed oil to leak out.

As DEC Staff argues, Mr. Drake's theory is speculative and not based on direct evidence about the tank's condition. No witness on either side actually examined the inside of the oil tank. Mr. Drake inspected only the outside of the tank, and that inspection occurred almost two years after the discharge. DEC Staff, on the other hand, saw the tank the day after the discharge, and reported nothing suggestive of a leak. According to Mr. Ketani, the tank appeared to be of solid construction, with no sign of serious corrosion or rusting underneath the tank that would indicate imminent failure. He added that the fuel line appeared to be of good quality construction and not weak at any specific point. (T: 138.)

The age of the tank and the fuel supply line when the discharge occurred cannot be determined on this record, though there was nothing to suggest that either had recently been replaced. Ms. Otoo said she has lived at 548 Hinsdale for about 40 years (T: 24, 38), and added that she was not aware of putting a new oil tank in since she purchased the property. (T: 39 - 40). She said she was not sure whether the line to the oil tank was replaced at the time she had a new oil burner installed about two years before the oil discharge. (T: 40.)

Mr. Drake said an oil tank like the one in Ms. Otoo's basement should be replaced every 25 to 35 years. (T: 202.) However, Mr. Ketani said that the natural life of a tank like Ms. Otoo's - a small private fuel tank made out of steel - can vary from 30 to 70 years, depending on conditions inside and outside the tank as well as the tank's servicing or management. (T: 138.) As there was no evidence of a hole in the tank or weakness in the supply line, I conclude that these were not factors in the discharge that occurred.

In summary, I find the respondents liable under both causes of action alleged in DEC Staff's papers. The respondents claim that DEC Staff did not prove its case by clear and convincing evidence. However, for the factual matters alleged here, Staff's burden - which it has met - was to prove its case merely by a preponderance of evidence [see 6 NYCRR 622.11(c)]. In other words, Staff's explanation of the discharge was more convincing than that proposed by the respondents.

- Violation Time Frames

DEC Staff alleges that both violations occurred over a period from August 23, 2005, the date of the discharge, to October 19, 2010, the date of Staff's motion for order without

hearing. I find that the discharge was a one-day event that occurred on August 23, 2005, and did not continue thereafter. The evidence indicates that on August 23, 2005, the tank emptied, and that by August 24, 2005, the date of Staff's response, there was no free product in the tank or on the basement floor of 548 Hinsdale Street. At that point, the petroleum had already entered the soil subsurface, where it would reach and then be carried along with the groundwater.

According to Navigation Law Section 172(8), "discharge" means "any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum into the waters of the state or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the state when damage may result to the lands, waters or natural resources within the jurisdiction of the state." Here, the respondents were responsible for the discharge of "petroleum" (which, according to Navigation Law Section 172(15), includes fuel oil) by virtue of intentional action related to the excavation they undertook at 552 Hinsdale Street, which contributed to the discharge four months later at an adjacent property. That discharge, according to DEC Staff's own evidence, occurred all at once, due to a substantial, forceful break in the piping connected to the oil tank. As Staff testified, the oil had a viscosity such that, once released, it would have quickly penetrated the concrete flooring. Having entered the soil subsurface, it was bound to enter "the waters of the state," which include groundwater as well as surface water bodies. [See definition of "waters" at Navigation Law Section 172(18).]

To support its theory that the "discharge" is a continuing violation of Navigation Law Section 173, DEC Staff counsel points out that petroleum traveling through soils and groundwater continues to move and impact perhaps multiple areas. (T: 12.) I agree with this observation, but note that it supports Staff's other cause of action, about the need to promptly contain discharges after they occur. In another DEC administrative enforcement matter, Huntington & Kildare, Inc. and Metz Family Enterprises, LLC (Order of the Commissioner, December 22, 2009), a continuing discharge of petroleum, in violation of Navigation Law Section 173, was established, but in relation to an ongoing and continuous discharge to groundwater from a leaking underground gasoline storage tank. Here, the discharge was not ongoing and continuous, but a discrete event that occurred on a single day, after which the tank was plugged. This discharge is

more like the discharge at the center of another administrative enforcement matter, Mustang Bulk Carriers (Order of the Commissioner, November 10, 2010), in which during a petroleum delivery to a service station, petroleum spilled into the soil around a fill port, onto the surrounding pavement, into a sewer drain and, from there, into the waters of the state. In that case, DEC Staff alleged - and the Commissioner found - a one-day violation of Navigation Law Section 173, despite the fact that the spill was not contained, in violation of Navigation Law Section 176, and the respondent was ordered to submit a plan for investigation and remediation of the discharge.

DEC Staff has also charged the respondents with failure to immediately undertake containment of the discharge from the date that it occurred to the date of Staff's motion, in violation of Navigation Law Section 176 and 17 NYCRR 32.5. I find that the evidence supports a more limited time frame for this violation.

At the hearing, Mr. Vought testified that on August 24, 2005, he sent a letter outlining remediation requirements to both 453 Newport Avenue in Brooklyn (the Woodalls' address) and 1928 Fulton Street (Super Development's address). However, that letter was not produced at the hearing, and Mr. Vought testified that he could not recall whether he received any response to it. (T: 77 - 78.)

Mr. Ramcharan testified that, at the time of the discharge, he was told by Mr. Woodall that a city fireman attributed it to a rotten pipe leading from the oil tank (T: 172), something about which Ms. Otoo, as the property owner, would presumably have responsibility. Mr. Ramcharan said that the first time he was contacted by any authorities about the discharge was in 2006, when DEC arranged to meet him at 548 Hinsdale Street. (T: 175 - 176.) After that meeting, reported by DEC Staff to have occurred on June 27, 2006, Mr. Ketani sent Mr. Ramcharan and Super Development Corp. a letter dated September 26, 2006, alleging that they had committed the violations alleged in this matter, identifying them as parties responsible for the discharge and directing them to commence removal of the contaminated soil and groundwater by October 12, 2006. Significantly, the letter, for which Staff has also provided proof of delivery, makes no reference to any prior letter conveying this same information.

Mr. Ketani described the September 26, 2006, letter, which he signed, as a "contaminated soil" letter that is issued by DEC's spills prevention and response unit, telling parties Staff

considers responsible for a discharge that they have to investigate and clean it up. It is unclear why this letter would have been issued if a similar one had been issued previously by Mr. Vought. As the evidence indicates, the respondents have done nothing to contain the discharge at 548 Hinsdale Street. However, given Staff's failure to produce a prior remediation directive, the violation in this regard should run from October 12, 2006, the deadline in Mr. Ketani's letter, not August 23, 2005, the date of the discharge.

- Civil Penalties and Other Relief

DEC Staff has requested a total civil penalty of \$50,000, to be apportioned evenly between the two causes of action. Assessment of this penalty is warranted, though I also recommend that payment of \$40,000 of the penalty be suspended, conditioned upon: (1) the respondents' payment of the non-suspended portion (\$10,000) of the penalty within thirty days of the service of the Commissioner's order; (2) the respondents' timely submission of an approvable work plan for the investigation and remediation of the petroleum discharge; and (3) the respondents' timely execution of the plan, as approved by DEC Staff.

I appreciate that, by stipulation with DEC Staff, the Woodalls have already agreed to clean up and remove the petroleum discharge pursuant to a work plan of their own. However, as of the hearing date, that plan had not yet been submitted, and DEC was apparently awaiting a determination in this matter before making any effort to enforce the stipulation.

At the hearing, DEC Staff counsel argued that while the Woodalls are liable in this matter, Mr. Ramcharan and Super Development Corp. are primarily responsible for the discharge, and therefore, remedies must be sought from them as well. Of course, there is a need for only one work plan and one remediation effort. As Staff counsel argued, there may be an opportunity for all the parties to collaborate on the work plan and share the expenses of remediation, but that is for them to work out on their own. (T: 14 - 15.)

Pursuant to Navigation Law Section 192, any person who violates either of the statutory provisions charged in this matter shall be liable to a penalty of not more than \$25,000 for each offense, with each day during which a violation continues constituting an additional, separate and distinct offense. With this understanding, the discharge of petroleum on one day only is sufficient to warrant Staff's recommended penalty for that

violation. That penalty is warranted in this case given a number of factors highlighted by DEC Staff. First, the discharge - estimated at about 100 gallons - is clearly serious, posing a risk to the environment and public welfare. Because of the vapors associated with the discharge, the occupants of 548 Hinsdale Street had to vacate the premises on order of the fire department. The environment was also affected once the discharge passed through the basement floor, into the subsurface soil, and, from there, into the groundwater table. As Mr. Ketani explained, oil can travel indefinitely once it hits the water table, which he said is close to ground level in this area. Once in the groundwater, he added, the oil becomes a hazard to homes downgradient of the discharge site, because the vapors from the oil can travel upwards through the sandy soils and into the basements of these homes in what is a densely populated area. (T: 111.) No evidence was produced about other homes being impacted by the discharge, but the risk alone contributes to the seriousness of the violation.

Finally, as Staff counsel argues, the respondents are in the business of excavation and construction, activities that carry the potential for close contact with oil storage tanks and lines, and require heightened care to avoid petroleum discharges. The penalty must be sufficient to deter those who do this work from undertaking activities in a manner that may adversely impact neighboring properties.

As for the respondents' failure to contain the discharge, this has continued over a period of years, even if the violation in this regard is deemed to run from October 12, 2006. Therefore, Staff's recommended penalty of \$25,000 for this violation is much less than the maximum that could be imposed by statute. Staff's recommended penalty is warranted in light of Mr. Ketani's testimony about his unsuccessful efforts to get the respondents to investigate and remediate the discharge in the period after he issued his "contaminated soil" letter.

As DEC Staff argues, the respondents have had some as yet unquantified economic benefit by not having to expend funds for investigation and remediation, and the failure to penalize them would be unfair to those who conduct themselves and their businesses with proper care and, when faced with need to address violations, do so immediately. Mr. Ramcharan acknowledged that, at DEC's prompting, he sent "two guys" to check the extent of the discharge, but added that he could not afford the price they quoted him, so he did not do anything, believing he was not liable for the spill. (T: 182.)

The respondents argue that if they are determined responsible for the petroleum discharge, no civil penalties should be assessed against them, given uncertainty about how the discharge occurred. While the record offers conflicting theories on this point, I am satisfied that, on the whole, the respondents' excavation work at least contributed to the discharge, particularly given the undisputed damage it caused to the house at 548 Hinsdale Street, in the area of the oil tank and its piping. Other factors, including Ms. Otoo's failure to have the tank and piping examined after her house was damaged, may also have contributed to the spill. However, DEC Staff has discretion as to whom it charges in these matters, and my role is to determine whether those who are charged are responsible for the violations alleged against them.

In fairness to the respondents, I recognize that the discharge did not occur on property that they owned or controlled, or to which they had a right of access. They did not witness the discharge and, by the time they became aware of it, the oil had already entered the soil subsurface, frustrating efforts to contain it. Based on information they gathered from other sources, including Mr. Woodall, the respondents may even have had some reason to doubt their liability for the spill, at least in its immediate aftermath. On the other hand, by Mr. Ketani's letter of September 26, 2006, they were informed that, in Staff's view, they were responsible for the discharge, and had obligations, as yet unfulfilled, to address it.

Mr. Ramcharan testified that in 2006, DEC initiated a criminal action against him in relation to the discharge, and that, in early 2007, the criminal charges were dismissed. (T: 179 - 185.) He provided no documentation about this action, and he did not explain what the charges were or how the matter was resolved, except to say it went "in front of the judge, and they offered no evidence, and the judge dismissed it." (T: 181.) DEC Staff counsel said he did not know that Mr. Ramcharan was found not guilty or that the criminal matter was dismissed (T: 183), but offered no explanation of it himself. Mr. Ramcharan said that when the criminal matter was dismissed, "I thought everything was finished," and that he was "done with this thing." (T: 184.) However, even if he had been found not guilty, DEC could still have proceeded with this administrative enforcement case, given the lower standard of proof that applies here.

According to DEC's spill report documentation, a "case initiation form" was sent from the spills unit to DEC counsel in May 2007. (Exhibit No. 11, page 4.) However, it was another three years before DEC Staff filed the motion for order without hearing. In their closing brief, the respondents argue that the long time it took DEC to commence this proceeding gives further credence to their belief that they were not responsible for the petroleum discharge. While Staff did not explain its delay in this regard, it has no bearing on the merits of its charges. Also, the respondents have not alleged that they were substantially prejudiced by the delay, which would be relevant to any claim under State Administrative Procedure Act Section 301(1) that they were not afforded an opportunity for hearing within reasonable time. [See Manor Maintenance Corp. and Richard Schultheis (Order of the Commissioner, February 12, 1996), in which DEC Staff delay in the issuance of formal charges substantially prejudiced respondents, resulting in a dismissal of charges.]

In their closing brief, the respondents submit that in the period just after the discharge, Mr. Ramcharan was not allowed into the Otoo house or requested to come inside, so it was reasonable for the respondents to conclude that they had no duty to mitigate the discharge and were not responsible for it. On the other hand, Ms. Otoo testified that approximately two weeks after the spill, she showed it to Mr. Ramcharan and he said it was not his fault. (T: 37.) Mr. Ramcharan's own testimony appears to contradict itself: first, he said he was not allowed inside the premises prior to 2006, when he was met there by DEC Staff, but then he said that he never asked to come inside because the Otoos never told him if the inside was damaged, and "they never invite me inside, so I never went inside." (T: 175 - 176.) Whether or not Ms. Otoo invited Mr. Ramcharan into her basement, I find no reliable evidence that he or any of the respondents' representatives were barred from entering, and there is no good reason why Ms. Otoo would have kept them out, given her interest in ensuring prompt remedial action.

To provide an incentive for spill remediation, I recommend that payment of some portion of any assessed civil penalty be permanently suspended if the respondents ensure that the discharge is investigated and remediated consistent with a work plan approved by DEC Staff.

CONCLUSIONS

1. On August 23, 2005, the respondents, Deodath Ramcharan and Super Development Corp., illegally discharged petroleum at 548 Hinsdale Street, Brooklyn, in violation of Navigation Law Section 173.

2. Between October 12, 2006, and October 19, 2010, the respondents failed to undertake containment of the petroleum discharge, in violation of Navigation Law Section 176 and 17 NYCRR 32.5.

RECOMMENDATIONS

1. The Respondents should be assessed a civil penalty of \$50,000 for the violations stated above, pursuant to Navigation Law Section 192.

2. Payment of \$10,000 of this penalty should be due within 30 days of service of the Commissioner's order.

3. Payment of the remainder of the penalty should be suspended, conditioned upon: (1) the respondents' timely payment of the non-suspended portion of the penalty; (2) the respondents' timely submission of an approvable work plan for the investigation and remediation of the petroleum discharge; and (3) the respondents' timely execution of the plan, as approved by DEC Staff.

ENFORCEMENT HEARING EXHIBIT LIST

DEODATH RAMCHARAN AND SUPER DEVELOPMENT CORP.
NYSDEC File No. R2-20101015-376

1. DEC Staff Motion for an Order Without Hearing, with supporting documents (10/19/10)
2. Respondents' Opposition to Motion for an Order Without Hearing, with supporting documents (11/9/10)
3. Ruling of the Administrative Law Judge (1/7/11)
4. ALJ's Hearing Notice (2/14/11)
5. ALJ's letter to parties' counsel (3/4/11)
6. Photograph of 548 and 552 Hinsdale Street, Brooklyn (6/7/06)
7. Photograph of rear corner of 548 Hinsdale Street (6/7/06)
8. Photograph of vent pipe and fill port, 548 Hinsdale Street (6/7/06)
9. Photograph of oil tank and supply line, 548 Hinsdale Street (6/7/06)
10. Second photograph of oil tank and supply line, 548 Hinsdale Street (6/7/06)
11. NYSDEC spill report form (Spill Number 0506371) (5 pages)
12. "Contaminated Soil" letter from Raphael Ketani (for DEC) to David Happy, GC Happy Corp. and Super Development Corp. (9/26/06), with domestic return receipts
13. Stipulation between DEC and Sean and Brandi Woodall (12/22/10), with attached corrective action plan
14. Report of Michael Drake, P.E., to Deodath Ramcharan (6/14/07). [Photographs identified in the report appear in Exhibits No. 15 - 19.]