

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

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In the Matter of the Alleged Violations of Articles 3, 17, 19 and 71 of the Environmental Conservation Law ("ECL"), Article 12 of the Navigation Law, and Parts 201, 230, 612, 613 and 614 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

- by -

**RIVER GAS INC., ASLI & GIZEM REALTY  
CORP., 102 ELMONT REALTY CORP.,  
VENUS BUKEY REALTY, INC.,  
GIZEM REALTY CORP., and NEDJET  
YETIM,**

Respondents.

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**ORDER**

Case No.  
D1-1293-06-MOWOH

Pursuant to section 622.12 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), staff of the New York State Department of Environmental Conservation ("Department") served a motion for order without hearing dated February 27, 2009, together with accompanying papers, upon Respondents River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Gizem Realty Corp., and Nedjet Yetim (collectively, "Respondents").

Respondents own and/or operate six petroleum bulk storage ("PBS") facilities on Long Island, New York.<sup>1</sup> In 2006, respondents signed an Order on Consent No. D1-1293-06, which

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<sup>1</sup> The six PBS facilities are located at the following addresses:

- 1741 Montauk Highway, Bellport, New York;
- 1278 Hempstead Turnpike, Elmont, New York;
- 653 Hempstead Turnpike, Elmont, New York;
- 4305 Austin Boulevard, Island Park, New York;
- 725 Wyandanch Avenue, North Babylon, New York; and
- 760 West Merrick Road, Valley Stream, New York.

became effective on June 6, 2006 (the "Consent Order").<sup>2</sup>

According to the terms of the Consent Order, Respondents were to pay a civil penalty in the amount of eighty-seven thousand dollars (\$87,000). In addition, Respondents were to undertake certain activities, including but not limited to providing for an independent third party environmental audit of the six PBS facilities, submitting to the Department a "curative measures program" for attaining, maintaining, and demonstrating compliance with applicable federal, State and local laws, regulations and permits at the PBS facilities, and implementing the curative measures program.

Department staff alleged that Respondents failed to comply with the terms of the Consent Order and requested a penalty of two hundred fifty thousand dollars (\$250,000). The matter was assigned to Administrative Law Judge ("ALJ") Maria Villa who prepared the attached Ruling and Summary Hearing Report ("Report"). I adopt the Report as my decision in this matter subject to my comments below.

Respondents did not respond to Department staff's motion, despite being properly served in accordance with 6 NYCRR 622.3. The record demonstrates that Respondents have not complied with the terms of the Consent Order. Respondents have failed to pay any portion of the civil penalty. Although Respondent Nedjet Yetim submitted three checks as partial payment of the civil penalty, all three checks were returned for insufficient funds when the Department attempted to cash them. Respondents have also failed to undertake any of the remedial actions required by the Consent Order.<sup>3</sup>

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<sup>2</sup> Venus Bukey Realty Corp. also signed the Consent Order. Although Venus Bukey Realty Corp. was named in the caption of the papers that staff filed in this proceeding, Department staff did not effect service on that entity (see Affidavit of Brooke Turallo sworn to March 10, 2008[sic][listing the respondents on whom service was effected]). Based on the information database of the New York State Department of State, of which official notice is taken, the correct corporate name for this entity is Venus Bukey Realty, Inc. Although this order imposes no obligations on Venus Bukey Realty, Inc., that entity remains obligated to pay the civil penalty and undertake the remedial actions set forth in the Consent Order.

<sup>3</sup> Moreover, as set forth in the affidavits of Department staff, Respondents have demonstrated a flagrant disregard of the laws and regulations that apply to PBS facilities (see Affidavit of Hugh Cirrito, sworn to February 27, 2009 and Affidavit of Nick Acampora,

Respondents have been in violation of the terms of the Consent Order for a period of more than two and one half years. This noncompliance warrants a significant penalty. The penalty that Department staff has requested, and which the ALJ recommends, is authorized and appropriate.

The civil penalty imposed by this order is in addition to, and does not supplant, the civil penalty of eighty-seven thousand dollars (\$87,000) that remains unpaid under the terms of the Consent Order. Furthermore, respondents remain responsible to undertake and otherwise implement the remedial actions required by the Consent Order.

**NOW, THEREFORE,** having considered these matters and being duly advised, it is **ORDERED** that:

I. Pursuant to 6 NYCRR 622.12, Department staff's motion for order without hearing is granted.

II. Respondents River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Gizem Realty Corp., and Nedjet Yetim are found to have violated the terms of Order on Consent No. D1-1293-06 effective June 6, 2006, by failing to pay the penalty of eighty-seven thousand dollars (\$87,000) and failing to undertake or otherwise implement the remedial actions set forth in the Consent Order.

III. Respondents River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Gizem Realty Corp., and Nedjet Yetim are jointly and severally assessed a civil penalty in the amount of two hundred fifty thousand dollars (\$250,000), which is due and payable no later than thirty (30) days after service of this order upon Respondents. Such payment shall be made in the form of a certified check, cashier's check or money order payable to the order of "New York State Department of Environmental Conservation" and delivered to the Department at the following address:

David H. Keehn, Esq., Associate Attorney  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500.

The penalty of two hundred fifty thousand dollars (\$250,000) is

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sworn to February 27, 2009, respectively).

in addition to the penalty of eighty-seven thousand dollars (\$87,000) that Respondents currently owe under the terms of the Consent Order.

IV. All communications from Respondents to the Department concerning this order shall be made to David H. Keehn, Esq., Associate Attorney, New York State Department of Environmental Conservation, Office of General Counsel, 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233-1500.

V. The provisions, terms and conditions of this order shall bind Respondents, their heirs, successors and assigns in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Alexander B. Grannis  
Commissioner

Dated: April 6, 2009  
Albany, New York

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of  
Articles 3, 17, 19 and 71 of the  
Environmental Conservation Law  
("ECL"), Article 12 of the Navigation  
Law, and Parts 201, 230, 612, 613 and 614  
of Title 6 of the Official Compilation of  
Codes, Rules, and Regulations of the State  
of New York ("6 NYCRR")

- by -

RULING AND SUMMARY  
HEARING REPORT ON  
MOTION FOR ORDER  
WITHOUT HEARING

**RIVER GAS INC., ASLI & GIZEM  
REALTY CORP., 102 ELMONT  
REALTY CORP., VENUS BUKEY  
REALTY, INC., GIZEM REALTY  
CORP., and NEDJET YETIM,**

Case No. D1-1293-06MOWOH

Respondents.

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PROCEEDINGS

On March 4, 2009, staff of the New York State Department of Environmental Conservation ("Department Staff") filed a motion for order without hearing (the "motion") pursuant to section 622.12 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). In its motion, Department Staff alleged violations of Articles 3, 17, 19, and 71 of the New York State Environmental Conservation Law ("ECL"), Parts 201, 230, 612, 613 and 614 of 6 NYCRR, and Article 12 of the New York State Navigation Law.

The motion stated that Respondents River Gas, Inc.,<sup>1</sup> Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Venus Bukey Realty Corp.,<sup>2</sup> Gizem Realty Corp., and Nedjet Yetim (collectively, "Respondents") entered into an Order on Consent (the "Order"), No. D1-1293-06, effective June 6, 2006. The Order required Respondents to undertake an

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<sup>1</sup> According to the records maintained by the New York State Department of State, "River Gas Inc." is this respondent's correct corporate name, although "River Gas, Inc." is the name that appears in the Order on Consent as well as in Department Staff's submissions on this motion.

<sup>2</sup> According to the records maintained by the New York State Department of State, "Venus Bukey Realty, Inc." is this respondent's correct corporate name, although "Venus Bukey Realty Corp." is the name that appears in the Order on Consent as well as in Department Staff's submissions on this motion.

independent, third-party audit of all of Respondents' petroleum bulk storage ("PBS") facilities<sup>3</sup> in the State, specifically the six facilities located at:

- (A) 653 Hempstead Turnpike, Elmont, Nassau County;<sup>4</sup>
- (B) 725 Wyandanch Avenue, North Babylon, Suffolk County;
- (C) 1741 Montauk Highway, Bellport, Suffolk County;
- (D) 760 West Merrick Road, Valley Stream, Nassau County;
- (E) 1278 Hempstead Turnpike, Elmont, Nassau County; and
- (F) 4305 Austin Boulevard, Island Park, Nassau County.

In addition, Respondents agreed to submit to the Department a curative measures program within thirty days of completion of the audit, and implement those measures subject to Department staff's approval. The Order imposed a civil penalty in the amount of \$87,000 (eighty-seven thousand dollars), to be remitted in accordance with a schedule set forth in the Order. Respondent Nedjet Yetim, who was identified in the Order as the sole shareholder of the corporate Respondents, signed the Order as president of each of those corporate entities.

According to Department Staff, Respondents failed to satisfy their obligations pursuant to the Order. Specifically, Department Staff alleged that Respondents did not carry out the remedial activities specified, nor did they pay any portion of the \$87,000 civil penalty. In addition, inspections at the 653 Hempstead Turnpike and 725 Wyandanch Avenue facilities revealed numerous violations of the State's PBS regulations.

The submissions on the motion included

- (1) a notice of motion, dated February 27, 2009;
- (2) the motion, signed by counsel for Department Staff on February 27, 2009;
- (3) a memorandum of law, dated February 27, 2009;
- (4) the affidavit of Maria Mastroianni, a legal assistant in the Department's Office of General Counsel, sworn to February 27, 2009 (the "Mastroianni Affidavit");
- (5) the affidavit of Hugh Cirrito, Environmental Engineer II in the Department's Region 1 office, sworn to February 27, 2009 (the "Cirrito Affidavit");
- (6) the affidavit of Nick Acampora, Response Section Supervisor, Office of Spill Prevention and Response in the Department's Division of Environmental Remediation, sworn to February 27, 2009 (the "Acampora Affidavit"); and

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<sup>3</sup> A petroleum bulk storage facility is defined at Section 612.1(c)(10) of 6 NYCRR to mean "one or more stationary tanks, including any associated intra-facility pipelines, fixtures or other equipment, which have a combined storage capacity of over 1,100 gallons of petroleum at the same site. A facility may include aboveground tanks, underground tanks or a combination of both."

<sup>4</sup> The facility at 653 Hempstead Turnpike is the subject of a summary abatement order issued on February 27, 2009, and continued by the Commissioner's order dated March 26, 2009. See Matter of 102 Elmont Realty Corp., et al., Order of the Commissioner, at 1; 2009 WL \_\_\_\_, (Mar. 26, 2009).

(7) an affidavit of service by Lieutenant Frank J. Lapinski, an Environmental Conservation Officer, sworn to March 6, 2009 (the “Lapinski Affidavit”).

According to the Lapinski Affidavit, Respondent Nedjet Yetim was personally served with the motion papers on March 4, 2009.<sup>5</sup> Respondents’ time to reply to the motion has expired, and as of the date of this hearing report, Respondents have not submitted anything in opposition to the motion. Pursuant to Section 622.12(b), failure to answer a motion for order without hearing constitutes a default.

On an unopposed motion for order without hearing, Department Staff must make a *prima facie* showing that it is entitled to judgment as a matter of law. See Matter of Alvin Hunt, d/b/a Our Cleaners, Decision and Order of the Commissioner, at 7, fn. 2, 2006 WL 2105981, \* 5, fn. 2 (July 25, 2006) (distinguishing standard applied on default motions from summary judgment standard applied on unopposed motion for order without hearing); Matter of Amanda J. Bice, Hearing Report on Motion For Order Without Hearing at 6, 2006 WL 1102815, \* 9 (April 11, 2006) (noting that “once it is concluded that staff has carried its initial burden of establishing a prima facie case on the factual allegations underlying each of the claimed violations, it may then be determined whether those claims have been established as a matter of law. If so, Department staff’s motion may be granted.”)

Here, the submissions on the motion, unopposed by Respondents, established Department Staff’s entitlement to judgment as a matter of law. The remainder of this ruling and summary hearing report describes the documentation submitted with Department Staff’s motion that provides the basis for the findings of fact and conclusions of law.

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<sup>5</sup> The papers initially submitted to the Office of Hearings and Mediation Services did not include the supporting affidavits. By letter dated March 5, 2009, the administrative law judge directed Department Staff to provide proof of service of a complete set of motion papers upon Respondents, or, in the alternative, to re-serve the motion. By letter dated March 9, 2009, Department Staff advised that Respondent Yetim was personally served with a complete set of papers on March 4, 2009, as stated in the Lapinski Affidavit. The motion papers served upon the corporate entities by service on the New York State Department of State were re-served on March 9, 2009, because the initial service on those Respondents did not include the supporting affidavits. See Affidavit of Service of Brooke Turallo (the “Turallo Affidavit”). That affidavit contains a typographical error, in that it indicates that it was sworn to on March 10, 2008, rather than March 10, 2009.

Respondent Venus Bukey Realty, Inc. is not listed in the Turallo Affidavit as one of the entities served through the New York State Department of State. Accordingly, Department Staff’s motion does not establish that respondent Venus Bukey Realty, Inc. (incorrectly identified in the Order and Department Staff’s papers as “Venus Bukey Realty Corp.”) was served in accordance with Section 622.3 of 6 NYCRR. The term “Respondents” in the remainder of this hearing report refers only to River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Gizem Realty Corp., and Nedjet Yetim.

## DISCUSSION

Section 622.12(a) provides that, in lieu of or in addition to a notice of hearing and complaint, Department Staff may serve a motion for order without hearing together with supporting affidavits reciting all the material facts. On its motion, Department Staff submitted three affidavits attesting to Respondents' violations of the Order. In her Affidavit, Ms. Mastroianni indicated that she processed the Consent Order, and that three checks signed by Respondent Yetim drawn on an account for Gizem Realty Corp. were returned for insufficient funds when the Department attempted to cash the checks. Mastroianni Affidavit, at ¶¶ 3-6. According to Ms. Mastroianni, no payments were received, and pursuant to the terms of the Consent Order, \$87,000 remains outstanding. *Id.* at ¶¶ 7-8. Ms. Mastroianni stated further that the Department had not received any documentation of compliance with the Consent Order. *Id.* at ¶ 9.

The Cirrito Affidavit stated that Mr. Cirrito inspected the facility at 653 Hempstead Turnpike on February 9, 2009, and that he observed a number of violations, including a lack of leak detection, failure to reconcile daily inventory records, severe wear on the fill port color coding on all three underground tanks at the facility, petroleum in the super gasoline fill port bucket, seal failure on the fill caps for the two regular gasoline tanks, and petroleum discharges at one of the dispensers (one discharge observed at a shear valve and one at a gasket). Cirrito Affidavit, at ¶¶ 6-11. The inspection also revealed that the metal components of all three pumps were not cathodically protected, in violation of federal law, despite the fact that they were buried in the soil. *Id.* at ¶12.

The Cirrito Affidavit went on to state that one of the tanks at the facility may have leaked from a large 8 inch by 5 inch hole and two hairline fractures, which "compromised the structural integrity of the tank beyond repair." *Id.* at ¶ 14. Mr. Cirrito stated further that Respondent Yetim had been warned by the tank manufacturer that if the tank were repaired there was no assurance that the damage would not happen again. *Id.* According to Mr. Cirrito, he received and reviewed a field inspection report and project change order from April of 2006 in connection with the tank, and then sent Respondent Yetim a letter prohibiting repairs to the tank and prohibiting its return to service. *Id.* at ¶ 15.

Mr. Cirrito went on to state that in his professional opinion, the tank should not be in service and should not store any petroleum product. *Id.* at ¶ 16. According to Mr. Cirrito, the tank threatens to leak or fail catastrophically, because the inspection of the tank performed in 2006 revealed that it was damaged beyond repair. *Id.* Mr. Cirrito stated that in his professional opinion, the tank must be emptied immediately and closed, because the continued operation of the tank presents an imminent danger of the tank leaking or otherwise failing. *Id.* at ¶ 17. Mr. Cirrito noted that Respondents "have submitted no documentation whatsoever indicating they have even attempted to achieve compliance with the requirements of the Order." *Id.* at ¶ 18.

The Cirrito Affidavit concluded that

Respondent Nedjet Yetim, and the corporations he controls, or controlled, including those named in this enforcement action, are, in my professional opinion, the most recalcitrant and dangerous operators in the Region, and have continually operated in flagrant disregard of the legal requirements that apply to bulk storage operations. This continuous and blatant flaunting of the law have [sic] resulted in actual injury, and extremely significant potential threats, to the environment and natural resources in the Region. In my professional opinion, Nedjet Yetim and any business entities controlled by him should not be permitted to engage in the petroleum bulk storage business in New York.

Id. at ¶19.

In his affidavit, Mr. Acampora stated that he inspected the facility at 725 Wyandanch Avenue, North Babylon, New York, on January 30, 2009. Acampora Affidavit, at ¶ 3. The Acampora Affidavit indicated that during that inspection, a number of violations were observed. Id. A release of petroleum that was documented in June of 2008 (spill No. 08-11701) was not reported to the Department until January 22, 2009. Id. The inspection was conducted as a result of this spill, and product was detected in two of the four tank bed monitoring wells. Id. According to Mr. Acampora, the product was dark amber in color, and it is unknown whether this product is related to spill No. 08-11701, or is a new release, or both. Id. Mr. Acampora stated that this failure to report is a violation of Section 175 of the New York State Navigation Law and Section 613.8 of 6 NYCRR. Id.

Additional violations were observed at the facility. The Acampora Affidavit states that

[u]pon removal of the square diamond plate cover over the premium submersible turbine pump (STP) sump, obvious gasoline odors and vapors emanating from the sump were observed. Closer inspection of the STP when energized revealed an active leak from the product piping at an elbow within the sump. The product was observed to be entering the surrounding soil directly beneath the leak point. Although the leak slowed when the pump was deactivated, it did not stop. Because a new leak was observed a new spill number was assigned (#08-11879).

Id. The Acampora Affidavit noted that this constituted a violation of Section 613.8 of 6 NYCRR. Id. Further violations included the failure to monitor the wells on a weekly basis (moreover, the wells were contaminated and no longer suitable for leak

detection), and the failure to keep records of such monitoring, in violation of Section 613.5(b)(3) and (4). Id. Monitoring wells were not properly secured or labeled, in violation of Section 613.4(b)(4), and daily and ten-day reconciliation of inventory records was not provided, in violation of Section 613.4. Id. No stage II vapor testing paperwork was on-site, in violation of Section 230.5(d) of 6 NYCRR. Id.

Mr. Acampora pointed out that the Department had not received any documentation of compliance with the Order, and reiterated Mr. Cirrito's statements concerning Respondents' flagrant disregard of the statute and regulations with respect to petroleum bulk storage operations. Id. at ¶¶ 4-5. According to Mr. Acampora, Respondents should not be permitted to continue to engage in the petroleum bulk storage business, and their operations at present have resulted in actual injury and extremely significant potential threats to the environment and natural resources in the Region. Id. at ¶ 5.

As part of its motion, Department Staff requested that the Commissioner impose a penalty of \$250,000.<sup>6</sup> To justify the penalty requested, Department Staff offered a penalty calculation as part of the memorandum of law in support of the motion. Department Staff referred to the Department's Civil Penalty Policy, DEE-1, issued June 20, 1990 (the "Policy"). Pursuant to the Policy, Department Staff's penalty calculation took into account both an economic benefit and a gravity component. With respect to the economic benefit component, Department Staff pointed out that for two years, Respondents avoided payment of the \$87,000 penalty imposed in the Order, and also avoided the expense associated with implementing the remedial measures required.

Pursuant to ECL Section 71-1929(1),

[a] 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 or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

Thus, Respondents' failure to comply with the Order would subject them to penalties of up to \$37,500 per day from the Order's effective date (June 6, 2006), a period of approximately two and one half years.

Department Staff pointed out that Respondents have repeatedly been advised of the ongoing and serious nature of the violations, and entered into a Consent Order with which they did not comply. Moreover, Department Staff stated that Respondents "are

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<sup>6</sup> This is in addition to the \$87,000 penalty, still unpaid, that was imposed by the Order.

among the most egregious violators in DEC's Region 1," and that their activities "have resulted in the Commissioner being forced to take the extraordinary action of issuing a Summary Abatement Order for certain of their illegal operations at one site covered by this action." Memorandum of Law, at 3. This history of non-compliance and failure to cooperate, in addition to the gravity of the violations, supports the imposition of the \$250,000 penalty requested by Department Staff.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The submissions on the motion support the following findings of fact and conclusions of law:

1. Respondents River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Venus Bukey Realty, Inc., and Gizem Realty Corp. are entities authorized to do business in the State of New York. Respondent Nedjet Yetim is the sole shareholder of the corporate Respondents.
2. Respondents River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Venus Bukey Realty, Inc., Gizem Realty Corp., and Nedjet Yetim are the owners and/or operators of six petroleum bulk storage facilities located in Nassau and Suffolk counties. Petroleum storage at each of the facilities exceeds 1,100 gallons.
3. Respondents River Gas, Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Venus Bukey Realty Corp. (see footnote 2, supra), Gizem Realty Corp., and Nedjet Yetim entered into an Order on Consent, No. D1-1293-06, effective June 6, 2006. Respondent Nedjet Yetim signed the Order in his individual capacity and also as president of each of the corporate entities.
4. The motion for order without hearing was properly served upon Respondents, with the exception of respondent Venus Bukey Realty, Inc., consistent with Section 622.3(a)(3).
5. Respondents did not submit a timely reply to the motion, or otherwise move.
6. The Order required Respondents River Gas, Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Venus Bukey Realty Corp., Gizem Realty Corp., and Nedjet Yetim to pay a penalty of \$87,000. Three checks signed by Respondent Yetim drawn on an account for Gizem Realty Corp. were returned for insufficient funds when the Department attempted to cash the checks. No payments have been made, and pursuant to the terms of the Order, \$87,000 remains outstanding. The Department has not received any documentation of compliance with the Order.
7. An inspection of the facility at 653 Hempstead Turnpike, in Elmont, on February 9, 2009, revealed a number of violations, including a lack of leak detection, failure to reconcile inventory records, severe wear on the fill port color coding on all

three tanks, petroleum in the super gasoline tank fill port bucket, seal failure on the fill caps for both regular gasoline tanks, and petroleum discharges at one of the dispensers (at a shear valve and a gasket).

8. The inspection also revealed that the metal components of all three pumps were not cathodically protected, in violation of federal law, despite the fact that they were buried in the soil.

9. The structural integrity of one of the tanks at the 653 Hempstead Turnpike facility was damaged beyond repair from a large 8 inch by 5 inch hole and two hairline fractures, one at each end of the tank. Department Staff sent Respondent Yetim a letter prohibiting repairs to the tank and return of the tank to service. The tank threatens to leak or fail catastrophically, because the interior inspection of the tank performed in 2006 revealed that it was damaged beyond repair.

10. Department Staff inspected the facility at 725 Wyandanch Avenue, in North Babylon, on January 30, 2009, and noted a number of violations. A release of petroleum that was documented in June of 2008 (spill no. 08-11701) was not reported to the Department until January 22, 2009. Product was detected in two of the four tank bed monitoring wells at the facility. The product was dark amber in color. The failure to report this spill is a violation of Article 12 of the New York State Navigation Law and Section 613.8 of 6 NYCRR.

11. A violation of Section 613.8 of 6 NYCRR was noted when, upon removal of the square diamond plate cover over the premium submersible turbine pump (STP) sump, gasoline odors and vapors emanating from the sump were detected. Inspection of the STP when energized revealed an active leak from the product piping at an elbow within the sump. The product was observed to be entering the surrounding soil directly beneath the leak point. Although the leak slowed when the pump was deactivated, it did not stop. Because a new leak was observed a new spill number was assigned (#08-11879).

12. Further violations included the failure to monitor the wells on a weekly basis and the failure to keep records of such monitoring, in violation of Section 613.5(b)(3) and (4).

13. Monitoring wells were not properly secured or labeled, in violation of Section 613.4(b)(4), and daily and ten-day reconciliation of inventory records was not provided, in violation of Section 613.4.

14. No stage II vapor testing paperwork was maintained on-site, in violation of Section 230.5(d).

15. Releases of petroleum at the facilities at 653 Hempstead Turnpike, Elmont, and 725 Wyandanch Avenue, North Babylon, and the failure to timely report those releases, as well as Respondents' failure to comply with the Order, violated the

Department's statutes and regulations governing PBS facilities, as well as Article 12 of the Navigation Law, and provisions relating to the State's air quality.

#### RECOMMENDATION

The motion for order without hearing is granted. This ruling and summary hearing report recommends that the Commissioner issue an order:

1. finding that Respondents River Gas Inc., Asli & Gizem Realty Corp., 102 Elmont Realty Corp., Gizem Realty Corp., and Nedjet Yetim violated Order on Consent No. D1-1293-06; and
2. assessing a civil penalty in the amount of \$250,000 (two hundred and fifty thousand dollars).

\_\_\_\_\_/s/\_\_\_\_\_  
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Maria E. Villa  
Administrative Law Judge

Dated: April 3, 2009  
Albany, New York