

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 40 of the Environmental Conservation Law of the State of New York (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

ORDER

-by-

DEC File No.:
R2-20101029-390

**RO ACQUISITION CORP. and
INDUSTRIAL FINISHING PRODUCTS INC.,**

Respondents.

This proceeding concerns the alleged violations by respondents RO Acquisition Corp. (RO) and Industrial Finishing Products Inc. (Industrial) of article 40 of the New York Environmental Conservation Law (ECL) and its implementing regulations with regards to the chemical bulk storage (CBS) facility that respondent RO owns at 820-840 Remsen Avenue, Brooklyn, New York and the CBS facility that respondent Industrial owns at 465 Logan Street, Brooklyn, New York.

Staff of the New York State Department of Environmental Conservation (Department) commenced this proceeding by serving on respondents a motion for order without hearing in lieu of complaint dated April 21, 2011. Respondent RO received the papers, by certified mail, on April 27, 2011, and respondent Industrial received the papers, by personal service, on May 19, 2011. Respondents did not file opposing papers.

Department staff, in its motion, sets forth five causes of action against respondent RO and eight causes of action against respondent Industrial. Department staff alleged that respondent RO:

- (1) failed to update its facility's spill prevention report;
- (2) failed to prepare a status report in compliance with 6 NYCRR parts 596, 598 and 599;
- (3) failed to inspect underground storage systems on a monthly basis (6 counts);
- (4) failed to provide adequate secondary containment for a transfer station; and
- (5) failed to properly label fill ports (6 counts).

Department staff alleged that respondent Industrial:

- (1) failed to update its facility's spill prevention report;
- (2) failed to provide a facility site map;
- (3) failed to prepare a status report in compliance with 6 NYCRR parts 596, 598 and 599;
- (4) failed to inspect underground storage systems on a monthly basis (4 counts);

- (5) failed to provide adequate secondary containment for a transfer station;
- (6) failed to properly label fill ports (4 counts);
- (7) failed to conduct weekly monitoring of the tanks' interstitial space; and
- (8) failed to investigate a suspected release or spill.

The violations were documented during staff inspections of the RO facility at 820-840 Remsen Avenue on May 7, 2010 and the Industrial facility at 465 Logan Street on May 14, 2010 (see Affidavit of Leszek Zielinski in support of motion for an order without hearing, April 21, 2011, ¶¶ 5, 6, 8 and 9). On behalf of the RO facility at 820-840 Remsen Avenue, plant manager Andrew Galgano sent an undated letter to Department staff that was received on May 13, 2011 (Galgano letter). The Galgano letter noted corrective actions undertaken at the RO facility at 820-840 Remsen Avenue following Department staff's investigation of that facility. By letter dated August 1, 2011, Department staff responded to Mr. Galgano and stated that, based on its review of the Galgano letter, violations relating to transfer station secondary containment and fill port labeling at the RO facility had not been corrected and remained outstanding.

The matter was assigned to Administrative Law Judge (ALJ) Molly T. McBride, who prepared the attached summary report. I adopt the ALJ's report as my decision in this matter, subject to the following comments.

I concur with the ALJ's determination that Department staff is entitled to a finding of liability on the causes of action set forth in its motion for order without hearing.

With respect to penalty, staff requested a civil penalty of thirty-seven thousand five hundred dollars (\$37,500) to be assessed against respondent RO and forty-two thousand five hundred dollars (\$42,500) to be assessed against respondent Industrial. As the ALJ notes, ECL 71-4303 provides that any person who violates any of the provisions of, or who fails to perform any duty imposed by ECL article 40 or any regulation promulgated thereunder, shall be liable for a civil penalty not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues. Staff's requested penalty is substantially below the maximum penalty authorized by the ECL.

Staff does not specifically cite the Department's Civil Penalty Policy, Commissioner Policy DEE-1 (June 20, 1990) or Bulk Storage and Spill Response Enforcement Policy, Commissioner Policy DEE-4 (March 15, 1991), regarding its computation of the penalty. However, my review of these Commissioner policies, indicate that Department staff's penalty request is consistent with them. As staff notes, the penalty is meant to punish violators, remove any economic gain obtained through noncompliance, and deter future noncompliance (see Affirmation of John K. Urda in support of motion for order without hearing, April 21, 2011, ¶¶ 79-80). Both facilities are located in heavily populated areas, where noncompliant activities could adversely impact the health of nearby residents (see id., ¶ 83). Based on this record, the penalties requested are authorized and appropriate.

As noted, plant manager Galgano provided a letter, with attached documentation, regarding corrective actions at the RO facility at 820-840 Remsen Avenue. Based upon the information submitted, a number of those actions occurred very soon after the inspection that

Department staff conducted in May 2010. It is, however, unclear why RO did not furnish this information until spring 2011. In light of the corrective actions that were undertaken, I conclude that it would be appropriate to suspend seventeen thousand five hundred dollars (\$17,500) of the requested thirty-seven thousand five hundred dollar (\$37,500) penalty, contingent upon RO addressing the two deficiencies referenced in Department staff's August 1, 2011 letter to Mr. Galgano, providing documentation in a form satisfactory to Department staff that these deficiencies have been corrected within thirty (30) days of the service of this order upon RO, and otherwise complying with all other terms and conditions of this order relating to RO.

Respondent Industrial has not provided any information relative to corrective actions, and no portion of the requested penalty as to that respondent shall be suspended. In addition to payment of the civil penalty, Industrial is being directed to provide documentation satisfactory to Department staff that the cited violations have been corrected. The documentation is to be submitted to Department staff within thirty (30) days of the service of this order upon respondent Industrial.

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

- I. Pursuant to 6 NYCRR 622.12, Department staff's motion for an order without hearing against respondent RO Acquisition Corp., relating to its facility at 820-840 Remsen Avenue, Brooklyn, New York, and respondent Industrial Finishing Products Inc., relating to its facility at 465 Logan Street, Brooklyn, New York, is granted.
- II. Respondent RO Acquisition Corp. is adjudged to have violated 6 NYCRR 596.2(h), 598.1(k)(1), 598.1(k)(2)(vii), 598.5(d), 598.6(a)(1), 599.3(a), and 599.17(c) at its facility at 820-840 Remsen Avenue, Brooklyn, New York.
- III. Respondent Industrial Finishing Products Inc. is adjudged to have violated 6 NYCRR 596.2(h), 596.6(b)(1), 596.6(b)(2), 598.1(k)(1), 598.1(k)(2)(iii), 598.1(k)(2)(vii), 598.5(d), 598.6(a)(1), 598.6(b)(2), 599.3(a), and 599.17(c) at its facility at 465 Logan Street, Brooklyn, New York.
- IV. Respondent RO Acquisition Corp. is assessed a civil penalty in the amount of thirty-seven thousand five hundred dollars (\$37,500), of which seventeen thousand five hundred dollars (\$17,500) is suspended contingent upon RO Acquisition Corp. addressing the two deficiencies referenced in Department staff's August 1, 2011 letter (relating to transfer station secondary containment and fill port labeling), providing documentation within thirty (30) days of the service of this order upon RO Acquisition Corp. in a form satisfactory to Department staff that the aforementioned deficiencies have been corrected, and otherwise complying with all other terms and conditions of this order relating to RO Acquisition Corp. The unsuspended portion of the civil penalty (twenty thousand dollars [\$20,000]) is due and payable within thirty (30) days of service of this order upon respondent. 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
NYS Department of Environmental Conservation
Region 2
One Hunter’s Point Plaza
47-40 21st Street
Long Island City, New York 11101-5407.

Should respondent RO Acquisition Corp. fail to provide documentation within thirty (30) days of the service of this order upon it, in a form satisfactory to Department staff, that the aforementioned deficiencies have been corrected, or otherwise comply with all other terms and conditions of this order relating to RO Acquisition Corp., the suspended portion of the penalty (seventeen thousand five hundred dollars [\$17,500]) shall become immediately due and payable and shall be submitted in the same form and to the same address as the non-suspended portion of the penalty.

- V. Respondent Industrial Finishing Products Inc. is assessed a civil penalty in the amount of forty-two thousand five hundred dollars (\$42,500), which is due and payable within thirty (30) days of service of this order upon respondent Industrial Finishing Products Inc. 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 or mailed to the Department at the address set forth in paragraph IV of this order.
- VI. Within thirty (30) days of service of this order upon it, respondent Industrial Finishing Products Inc. shall submit documentation satisfactory to Department staff demonstrating that the chemical bulk storage violations at its facility at 465 Logan Street, Brooklyn, New York have been corrected.
- VII. 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 IV of this order.

VIII. The provisions, terms, and conditions of this order shall bind respondents RO Acquisition Corp. and Industrial Finishing Products Inc., and their agents, successors, and assigns in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Joseph J. Martens
Commissioner

Dated: December 6, 2011
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 40 of
the Environmental Conservation Law of the State of
New York (ECL) and Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York (6 NYCRR),

SUMMARY REPORT
ON MOTION FOR
ORDER WITHOUT
HEARING

-by-

RO ACQUISITION CORP. and
INDUSTRIAL FINISHING PRODUCTS INC.,

NYSDEC File:
R2-20101029-390

Respondents.

Procedural History

The Department of Environmental Conservation (Department, DEC) served respondents, RO ACQUISITION CORP. (RO) and INDUSTRIAL FINISHING PRODUCTS INC. (Industrial) with a motion for order without hearing in lieu of complaint, dated April 21, 2011, alleging violations of ECL Article 40 and its implementing regulations, 6 NYCRR 596, 598 and 599 for violations related to chemical bulk storage facilities owned and operated by respondents. The motion was supported by the affirmation of John K. Urda, DEC assistant regional attorney dated April 21, 2011 and the affidavit of DEC Environmental Engineer 2 Leszek Zielinski sworn to on April 21, 2011. The facilities are located at 820-840 Remsen Avenue, Brooklyn, New York (Remsen) and 465 Logan Street, Brooklyn, New York (Logan). The complaint seeks an order of the Commissioner: (1) finding respondents in violation of 6 NYCRR 596, 598 and 599; (2) assessing a civil penalty in the amount of thirty-seven thousand, five hundred dollars (\$37,500) for the Remsen facility and forty-two thousand, five hundred dollars (\$42,500) for the Logan facility; (3) directing respondents to comply with all ECL provisions, rules and regulations governing chemical bulk storage; directing respondents to correct all violations alleged in the complaint; and (4) granting such other and further relief as the Commissioner may deem just and proper.

Respondent RO was served with the motion for order without hearing by certified mail, return receipt requested, on April 27, 2011. Department staff provided proof of service by certified mail on respondent RO. Respondent Industrial was served personally on May 19, 2011 by service on employee James Galgano, who indicated that he was authorized to accept service for respondent Industrial.

Respondent Industrial sent an undated letter of Andrew Galgano, Industrial Finishing Products Plant Manager (Galgano letter) received by Department staff on May

13, 2011. The Galgano letter only addresses the Remsen facility.¹ By letter dated August 1, 2011 Department staff responded to the letter of Industrial.

The motion for order without hearing, the Galgano letter, and Department staff's response were forwarded to the Department's Office of Hearings and Mediation Services (OHMS) on August 1, 2011 and the matter was assigned to Administrative Law Judge (ALJ) Molly T. McBride.

Background

Respondents are two active domestic business corporations in the State of New York. RO has offices at 96 McCouns Lane, Old Brookville, New York and Industrial has offices located at 747 Belmont Avenue, Brooklyn, New York. RO owns a chemical bulk storage (CBS) facility at 820-840 Remsen Avenue, Brooklyn, registered with the Department as CBS facility 2-000159. Industrial owns a CBS facility located at 465 Logan Street, Brooklyn registered with the Department as CBS facility 2-000162. NYS Department of State records indicate that Stephen Galgano is President of RO and Department records filed by respondents indicate that Stephen Galgano is President of Industrial as well. Department staff alleges that respondents are under common ownership and management.

Department staff alleges that respondents have numerous violations of ECL Article 40 and its implementing regulations at both facilities related to the CBS tanks.

Staff's Position

DEC acting Chief of the Bulk Storage Unit of the Bureau of Spill Prevention and Response, Division of Environmental Remediation in the Department's Region 2 office, is Leszek Zielinski. Zielinski inspected the Remsen facility in May 2010 and found numerous violations of the CBS regulations resulting in a Notice of Violation (NOV) being issued to respondent RO on May 11, 2010. Also in May 2010 Zielinski inspected the Logan facility and found numerous CBS violations. A Notice of Violation was issued to Industrial on May 19, 2010.

Department staff has alleged the following violations against RO at the Remsen facility: (1) failure to update a spill prevention report; (2) failure to prepare a compliance status report; (3) failure to inspect tanks monthly, 6 counts; (4) failure to provide adequate secondary containment for a transfer station; and (5) failure to properly label fill ports, 6 counts. Department staff has requested a total penalty of \$37,500.00 for these violations.

¹ The Galgano letter identified Mr. Galgano as Plant manager of Industrial Finishing Products, Inc. but only addresses the NOV issued for the Remsen facility. According to the Department's registration records, respondent Industrial owns and operates the Logan facility and respondent RO owns and operates the Remsen facility.

Department staff has alleged the following violations against Industrial at the Logan facility: (1) failure to update a spill prevention report; (2) failure to provide a facility site map; (3) failure to prepare a compliance status report; (4) failure to inspect tanks monthly, 4 counts; (5) failure to provide adequate secondary containment for a transfer station; (6) failure to properly label fill ports, 4 counts; (7) failure to conduct weekly leak monitoring; and (8) failure to investigate a suspected release or spill. Department staff has requested a total penalty of \$42,500.00 for these violations.

Respondents' Position

Department staff received the undated Galgano letter on May 13, 2011. The letter was from Andrew Galgano, Industrial Finishing Products Plant Manager. Mr. Galgano said he was responding to the May 14, 2010 inspection of the Remsen facility by Zielinski. The letter responded to each violation noted in the Remsen NOV individually. The letter references that all violations have been remedied. The letter either provides a date in May 2010 when the work was done in response to the NOV or is silent as to when the work was done. Department staff responded to the Galgano letter by letter of John Urda, dated August 1, 2011. Mr. Urda notes in the letter that two violations remain uncorrected: (1) transfer station secondary containment not repaired properly; and (2) fill port labeling inadequate, missing manufacturer's or engineer's statement that tanks in conformance with applicable regulations.

Discussion

Applicable Regulatory Provisions

6 NYCRR Sections 596, 598 and 599 detail the requirement for CBS tanks.

6 NYCRR Section 596.2(h) requires that within 30 days of a validated registration certificate, or whenever there is a change in the hazardous substance contained in the storage tank, the owner must clearly mark or label each storage tank or fill port with the tank ID number, chemical name or common name, total capacity and working capacity of the tank, and warning signs as detailed by NYS Fire Prevention and Building Code.

6 NYCRR 596.6(b)(1) & (2) require the owner or operator to immediately investigate all actual, probable or suspected releases or spills and to submit the results of the investigation within 14 days to the DEC.

6 NYCRR 598.1(k)(1) requires owner or operator to maintain a Spill Prevention Report (SPR) for preventing and responding to spills, releases and accidents at a facility and update it annually or whenever a significant release occurs or a substantial modification occurs.

6 NYCRR 598.1(k)(2)(iii) requires the SPR to include an up-to-date facility map with

sufficient detail to locate and identify tanks, transfer stations and connecting pipes.

6 NYCRR 598.1(k)(2)(vii) requires the SPR to include a status report on compliance.

6 NYCRR 598.5(d) requires all transfers of hazardous substances to occur at a transfer station equipped with spill containment in accordance with 6 NYCRR 599.17(c).

6 NYCRR 598.6(a)(1) provides that the owner or operator must make monthly inspections of vents, pressure relief devices, gauges, alarms, overfill prevention equipment, cathodic protection monitoring equipment, other monitoring equipment, warning alarms, and safety systems. Equipment must be visually inspected for cleanliness, leakage, corrosion, and operability.

6 NYCRR 598.6(b)(2) requires owner or operator to monitor the interstitial space between a double walled tank weekly.

6 NYCRR 599.3(a) requires that all new underground tanks used in New York bear a permanent stencil, label or plate with manufacturer's or qualified engineer's statement that "This tank conforms with 6 NYCRR Part 599"; the standard of design by which the tank was manufactured; the hazardous substances which may be stored permanently and compatibly within the tank, or reference to a list available from the manufacturer which identifies products compatible with all tank materials; the year in which the tank was manufactured; the dimensions, design and working capacity and model number of the tank; and the manufacturer name.

6 NYCRR 599.17(c) requires that the transfers of hazardous substances must take place within a transfer station which is equipped with a permanently installed secondary containment system that is capable of collecting leaks and spills which are likely to occur during transfer; must be designed, installed and operated to prevent any migration of hazardous substances, components of hazardous substances or degraded products, out of the system to the soil, groundwater or surface waters before cleanup occurs; and must have sufficient strength and thickness to withstand wear, hydrostatic forces, frost heaving and weathering.

6 NYCRR § 622.12 Motion for order without hearing

(a) In lieu of or in addition to a notice of hearing and complaint, the staff may serve, in the same manner, a motion for order without hearing together with supporting affidavits reciting all the material facts and other available documentary evidence. Simultaneously with the service of the motion for order without hearing or as soon as practical thereafter, department staff shall send a copy of the motion and supporting papers to the Chief ALJ together with proof of service on the respondent.

(d) A contested motion for order without hearing will be granted if, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party. Likewise, where the

motion includes several causes of actions, the motion may be granted in part if it is found that some but not all such causes of action or any defense thereto is sufficiently established. Upon determining that the motion should be granted, in whole or in part, the ALJ will prepare a report and submit it to the commissioner pursuant to section 622.18 of this Part.

LOGAN FACILITY

Respondents have not responded to the NOV for the Logan facility and have not responded to the motion with respect to the Logan facility. As a result, Respondent Industrial is in default. Department staff has established it is entitled to summary judgment on eight causes of action against respondent Industrial with regards to the CBS facility with four tanks located on Logan Street. The violations are as follows: (1) failure to update a spill prevention report; (2) failure to provide a facility site map; (3) failure to prepare a compliance status report; (4) failure to inspect tanks monthly, 4 counts; (5) failure to provide adequate secondary containment for a transfer station; (6) failure to properly label fill ports, 4 counts; (7) failure to conduct weekly leak monitoring; (8) failure to investigate a suspected release or spill. The motion served by Department staff was supported by the affidavit of Environmental Engineer 2, Leszek Zielinski who detailed each of the violations alleged in the complaint. Engineer Zielinski conducted a site visit on May 14, 2010 and personally observed the violations. The NOV was issued on May 19, 2010 and “respondents have not submitted evidence of corrective action for any of the violations set forth above.” (Zielinski affidavit ¶12)

REMSSEN FACILITY

DEC Engineer Zielinski also conducted a site visit for the Remsen facility and observed five violations of the CBS regulations. The facility has six chemical bulk storage tanks. The violations observed were (1) failure to update a spill prevention report; (2) failure to prepare a compliance status report; (3) failure to inspect tanks monthly, 6 counts; (4) failure to provide adequate secondary containment for a transfer station; and (5) failure to properly label fill ports, 6 counts. The Galgano letter addressed the violations individually and stated how each violation has been corrected. However, it does *not* dispute or deny any of the alleged violations.

Findings of Fact

1. Respondent RO ACQUISITION CORP. is the owner of a chemical bulk storage facility located at 820-840 Remsen Avenue, Brooklyn, New York registered with the Department as CBS facility 2-000159. (Urda affidavit, ¶5 & 6)
2. Respondent RO ACQUISITION CORP. is an active domestic business corporation in the State of New York. (Urda affidavit, Exhibit A)
3. Department staff inspected the Remsen facility on May 7, 2010 and found numerous violations of regulations pertaining to chemical bulk storage facilities.

(Zielinski affidavit, ¶6)

4. On May 11, 2010 a Notice of Violation was sent to respondent RO ACQUISITION CORP. by certified mail. (Zielinski affidavit, ¶7)
5. Respondent INDUSTRIAL FINISHING PRODUCTS INC. is the owner of a chemical bulk storage facility located at 465 Logan Street, Brooklyn, New York registered with the Department as CBS facility 2-000162. (Urda affidavit, ¶6)
6. Respondent INDUSTRIAL FINISHING PRODUCTS INC. is an active domestic business corporation in the State of New York. (Urda affidavit, Exhibit B)
7. Department staff inspected the Logan facility on May 14, 2011 and found numerous violations of the chemical bulk storage regulations. (Zielinski affidavit, ¶9)
8. On May 19, 2010 a Notice of Violation was sent to respondent INDUSTRIAL FINISHING PRODUCTS INC. by certified mail. (Zielinski affidavit, ¶10)
9. Respondent RO was served, on April 27, 2011, with a notice of motion for order without hearing in lieu of complaint dated April 21, 2011, alleging violations of ECL Article 40 and its implementing regulations.
10. Respondent Industrial was served on May 19, 2011 with a notice of motion for order without hearing in lieu of complaint dated April 21, 2011, alleging violations of ECL Article 40 and its implementing regulations.
11. Respondent RO did not oppose the motion or respond to the motion.
12. Respondent Industrial sent an undated letter to Assistant Regional Attorney John K. Urda, received on May 13, 2011, addressing the violations noted in the May 14, 2010 Notice of Violation served with regards to the Remsen facility. The letter states that Industrial Finishing Products Inc. has corrected or remedied each of the violations noted in the Remsen facility Notice of Violation. Department staff states that two violations remain uncorrected as of August 1, 2011.
13. Respondents did not respond to the alleged violations at the Logan facility.

Conclusions of Law

1. Department staff's proof presents a prima facie case demonstrating that respondent RO has violated 6 NYCRR 598.1(k)(1); 598.1(k)(2)(vii); 598.6(a)(1); 598.5(d) and 599.17(c); and 596.2(h) and 599.3(a).

2. The Department is entitled to an order pursuant to 6 NYCRR 622.12 finding respondent RO committed the alleged violations.
3. Department staff's proof presents a prima facie case demonstrating that respondent Industrial has violated 6 NYCRR 598.1(k)(1); 598.1(k)(2)(iii); 598.1(k)(2)(vii), 598.6(a)(1), 598.5(d) and 599.17(c); 596.2(h), 599.3(a), 598.6(b)(2), and 596.6(b)(1) and (b)(2).
4. The Department is entitled to an order pursuant to 6 NYCRR 622.12 finding respondent Industrial committed the alleged violations.

Penalty

ECL § 71-4303. Violations of article forty of this chapter

1. Civil and administrative sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, article forty of this chapter or any rule or regulation promulgated thereunder, or any terms or conditions of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title, shall be liable in the case of a civil penalty not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article or by a court in any action or proceeding pursuant to this title, and, in addition thereto such person may by similar process be enjoined from continuing such violation. In addition, upon the provision of notice stating the grounds for its action and giving an opportunity for hearing, the commissioner may revoke, suspend or deny a certificate or a renewal of a certificate issued pursuant to article forty of this chapter. In the case of a second violation, the liability shall be for a civil penalty not to exceed fifty thousand dollars for such violation and an additional penalty not to exceed fifty thousand dollars for each day during which such violation continues.

Department staff has calculated the maximum statutory penalty provided for under ECL 71-4303 for a single day of violation by RO to be \$375,000. The maximum statutory penalty for a single day of violation by Industrial is \$425,000. Department staff has requested one-tenth of the maximum one-day penalty for each respondent.

The Department has a civil penalty policy that provides guidance in establishing appropriate penalties in enforcement cases. The policy notes that a penalty is to (i) punish the violator; (ii) remove any economic gain violators may have obtained through noncompliance; and (iii) deter future noncompliance. (See Civil Penalty Policy, Commissioner Policy DEE-1 [1990]) Department staff served a notice of violation on each respondent in May 2010 and no response was received until May 2011, after the motion was served. Department staff notes in the Urda affidavit, that it attempted to resolve the matter by way of a consent order but those attempts were ignored by respondents. (Urda affidavit ¶82) Also, the Urda affidavit notes that the facilities are

both located in heavily populated areas, posing a threat to a large population, and respondents have a “heightened duty of care concerning transfer, storage and use of hazardous substances...” (Urda affidavit ¶83). In light of the facts presented by Department staff, it is clear that the significantly reduced penalty requested by Department staff is reasonable.

Ruling

The motion for order without hearing is granted with respect to both respondents.

Recommendation

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

1. Granting Department staff’s motion for order without hearing against both respondents pursuant to the provisions of 6 NYCRR 622.12;
2. Finding respondent RO violated 6 NYCRR 598.1(k)(1); 598.1(k)(2)(vii); 598.6(a)(1); 598.5(d) and 599.17(c); and 596.2(h) and 599.3(a);
3. Finding respondent Industrial violated 6 NYCRR 598.1(k)(1); 598.1(k)(2)(iii); 598.1(k)(2)(vii); 598.6(a)(1); 598.5(d) and 599.17(c); 596.2(h); 599.3(a); 598.6(b)(2); and 596.6(b)(1) and (b)(2);
4. Directing respondent RO to pay a civil penalty in the amount of thirty- seven thousand five hundred dollars (\$37,500);
5. Directing respondent Industrial to pay a civil penalty in the amount of forty-two thousand five hundred dollars (\$42,500);
6. Directing both respondents to comply with all ECL provisions, rules and regulations concerning chemical bulk storage, and correct all violations that have occurred to date; and
7. Directing such other and further relief as the commissioner may deem just and proper.

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

Dated: Albany, New York
November 4, 2011