

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 of
the Environmental Conservation Law of the State of New York
("ECL") and Section 750-2.5 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York ("6 NYCRR"),

ORDER

DEC Case No.:
CO 3-20090909-5

-by-

B PETROLEUM CORP.,

Respondent.

On December 11, 2009, an adjudicatory hearing was convened before Richard R. Wissler, Administrative Law Judge ("ALJ") of the Office of Hearings and Mediation Services of the New York State Department of Environmental Conservation ("Department"). The hearing concerned the Department's allegations that respondent/permittee B Petroleum Corp. failed to file discharge monitoring reports ("DMRs") for one outfall to receiving waters of the State for the months of March and April 2009, as required by its SPDES permit NY0235008. The SPDES permit was issued for a facility known as B Petroleum Corp., located at Route 209, Village of Ellenville, Ulster County, New York 12428.

Department staff was represented by Scott W. Crisafulli, Esq., Office of General Counsel. Respondent/permittee failed to answer the Department staff's complaint and did not appear at the hearing.

Upon review, I adopt the Hearing Report of ALJ Richard R. Wissler, a copy of which is attached.

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

- I. By failing to serve an answer and appear at the hearing duly scheduled in this matter, respondent/permittee B Petroleum Corp. defaulted in this proceeding and waived its right to be heard.
- II. Respondent/permittee is adjudged to have violated 6 NYCRR 750-2.5(e) for failure to submit DMRs under SPDES Permit No. NY0235008 for March and April 2009.
- III. Within fifteen (15) days of the service of this order, respondent/permittee shall submit to the Department the outstanding DMRs for the months of March and April 2009, as required by SPDES Permit No. NY0235008.

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Articles 17 and 71 of
the Environmental Conservation Law of the State of New York
(ECL) and Section 750-2.5 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York (6 NYCRR),

HEARING REPORT

DEC CASE NO:
CO 3-20090909-5

-by-

B PETROLEUM CORP.

Respondent.

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Procedural History

Respondent/permittee, B Petroleum Corp. (B Petroleum) was served by certified mail with a Notice of Hearing and Complaint, dated October 9, 2009, alleging two (2) violations of 6 NYCRR 756.3(a) [now 6 NYCRR 750-2.5(e)] for failure to file discharge monitoring reports (DMRs) for one stormwater runoff outfall to Sandburg Creek, a Class B(T) stream, during the months of March and April 2009, as required by its SPDES permit NY0235008, for a facility known as B Petroleum Corp., located at Route 209, Village of Ellenville, Ulster County, New York 12428. The Complaint seeks the following relief: (1) A finding that respondent is in violation of the cited regulations, (2) a direction that respondent submit the overdue DMRs along with any accompanying laboratory reports, (3) a direction that respondent file future DMRs in a timely manner, (4) the assessment of a civil penalty in the amount of \$7,500, and (5) such other relief as the Commissioner may deem just and proper. In addition, the Notice of Hearing advised B Petroleum that any Answer to the Complaint must be filed by November 11, 2009, and that an adjudicatory hearing in the matter was scheduled for December 11, 2009, requiring its appearance. As shown by United States Postal Service records, B Petroleum received the Notice of Hearing and Complaint on October 19, 2009. B Petroleum failed to file an Answer to the Complaint and failed to appear for the adjudicatory hearing scheduled for December 11, 2009.

On December 11, 2009, the adjudicatory hearing was convened before the undersigned Administrative Law Judge (ALJ) of the Department of Environmental Conservation's (Department) Office of Hearings and Mediation Services (OHMS). Department staff was represented by Scott W. Crisafulli, Esq., Chief of the Water Bureau. Neither B Petroleum nor any representative appeared on its behalf.

Department staff called one witness, Koon Tang, P.E., Chief of the SPDES Compliance Assurance Section of the Department's Division of Water. Department staff submitted six (6) exhibits, all of which were received in evidence. At the close of the hearing, Department staff moved for a default judgment and subsequently submitted a proposed order.

Applicable Regulatory Provisions

6 NYCRR 750-1.2(a)(28): “Discharge Monitoring Report (DMR) means a report submitted by a permittee to the department summarizing the effluent monitoring results obtained by the permittee over periods of time as specified in the SPDES permit.”

6 NYCRR 750-2.5(e)(1): “The permittee shall submit the results of any wastewater or ambient monitoring results required by the permit at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee by the department, in a format acceptable to the department, or by the electronic transfer of data as approved by the department. Electronic submissions shall conform to the format, standards and other conditions specified by the department. The regional water engineer may also require the submittal of such other information as is necessary to determine the validity of monitoring results submitted in accordance with permit requirements. In no event shall reports on discharges to surface waters required by this subdivision be submitted at a frequency of less than once per year.”

6 NYCRR 756.3(a), repealed and replaced by 6 NYCRR 750-2.5(e)(1) in 2003, provided: “(a) Any results obtained by a permittee pursuant to monitoring requirements in a SPDES permit shall be reported at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee with the SPDES permit.”

Findings of Fact

1. B Petroleum Corp., (B Petroleum) was issued State Pollution Discharge Elimination System (SPDES) Permit NY0235008 (the Permit) by the Department effective May 1, 1992, for a facility known as B Petroleum Corp., located at Route 209, Village of Ellenville, Ulster County, New York 12428. The Permit has been subsequently renewed and was current as of the dates of the violations alleged in the Complaint.
2. The Permit authorizes one (1) stormwater runoff outfall to Sandburg Creek, a Class B(T) stream. The out fall is designated “001M”. The Permit sets effluent parameters for outfall 001M for flow, oil and grease, and pH.
3. Pages 2 and 3 of the Permit delineate the recording, reporting and additional monitoring requirements of the Permit and direct B Petroleum to file Discharge Monitoring Reports (DMRs) with the Department on a monthly basis for outfall 001M for the aforementioned effluent parameters.
4. Koon Tang, P.E. is an employee of the Department whose duties include the care, custody, and maintenance of the DMRs filed with the Department.
5. On December 11, 2009, Koon Tang searched the DMR files of the Department for any and all DMRs filed by B Petroleum under the Permit.

6. As a result of his search, Koon Tang determined that there were no monthly DMRs in the files of the Department for the Permit for outfall 001M for the months of March and April 2009 for the aforementioned effluent parameters.
7. B Petroleum was served by certified mail with a Notice of Hearing and Complaint, dated October 9, 2009, alleging two (2) violations of 6 NYCRR 756.3(a) [now 6 NYCRR 750-2.5(e)] for failure to file the DMRs indicated in Finding of Fact 6. The Notice of Hearing advised B Petroleum that it was required to file an Answer to the Complaint by November 11, 2009, and that an adjudicatory hearing in this matter would be convened on December 11, 2009, at the Department's Region 3 offices.
8. As shown by United States Postal Service records, B Petroleum received the Notice of Hearing and Complaint on October 19, 2009.
9. B Petroleum failed to file an Answer to the Complaint and failed to appear for the adjudicatory hearing held on December 11, 2009.

Discussion

Department staff's proof presents a prima facie case demonstrating that B Petroleum failed to file DMRs with the Department for outfall 001M for March and April 2009 as set forth in Finding of Fact 6, above, in violation of the express provisions of SPDES permit NY0235008 and applicable Department regulations.

The record shows that B Petroleum was served with the Notice of Hearing and Complaint on October 19, 2009, and that it failed to file an answer to the complaint or to appear for the scheduled adjudicatory hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's proposed order and the \$7,500 civil penalty it seeks are consistent with the Department's penalty policy as well as applicable provisions of ECL article 71.

Recommendation

Based upon the foregoing, I recommend the Commissioner issue an order granting the relief sought in the proposed order submitted by Department staff pursuant to 6 NYCRR 622.15(b)(3).

/s/

Richard R. Wissler
Administrative Law Judge

Dated: Albany, New York
December 21, 2009

EXHIBIT CHART – DMR EXPEDITED PROCEEDINGS

Matter of B Petroleum
December 11, 2009 – Region 3

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	October 9, 2009 cover letter, with attached October 9, 2009 Notice of Hearing, October 9, 2009 Complaint with attached Affidavit in Support of Koon Tang, sworn to October 7, 2009, and October 9, 2009 Statement of Readiness	√	√	Department Staff	
2	SPDES Permit No. 023 5008	√	√	Department Staff	
3	Change of address notification	√	√	Department Staff	
4	Notices of Violation (7) – March to September, 2009	√	√	Department Staff	
5	Affidavit of Service, with certified mail delivery information	√	√	Department Staff	
6	Department Staff's Penalty Calculation	√	√	Department Staff	