

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

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In the Matter of the Alleged Violations of Articles 17 and 27 of the Environmental Conservation Law of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Parts 360, 372, 374, 612, 613, and 614,

**DECISION AND ORDER**

-by-

DEC Case No.  
R5-20120627-2006

**BISSCO HOLDING, INC., also known as "BissCo" HOLDING, INC., and STEPHEN S. BISS, individually and in his capacity as officer of BISSCO HOLDING, INC.,**

Respondents.

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**I. BACKGROUND**

This administrative enforcement proceeding addresses allegations by staff of the New York State Department of Environmental Conservation (Department) that respondents Bissco Holding, Inc. (Bissco Holding) and Stephen S. Biss (Biss)(collectively, respondents) committed multiple violations of the Environmental Conservation Law (ECL) and its implementing regulations relating to: (i) petroleum bulk storage (PBS) facilities; (ii) storage and disposal of solid waste; (iii) hazardous waste management facilities; and (iv) water pollution, at an automotive repair and service business known as Scott's Auto Sales located at 4724 Route 50 in the Town of Northumberland, Saratoga County, New York (facility).

Specifically, Department staff alleges that respondents violated:

1. 6 NYCRR 612.2(a)(1), by failing to register as a PBS facility;
2. 6 NYCRR 613.9(b), by failing to close nine 275-gallon PBS tanks at the facility;

3. 6 NYCRR 613.3(b)(1), by failing to color code the fill ports on nine 275-gallon PBS tanks;
4. 6 NYCRR 613.3(c)(3)(i), by failing to install gauges or high level alarms on the nine 275-gallon PBS tanks;
5. 6 NYCRR 613.3(c)(3)(ii), by failing to mark the nine 275-gallon PBS tanks with their respective design or working capacity and identification number;
6. 6 NYCRR 613.3(c)(6)(i)(a), by failing to install secondary containment for the nine 275-gallon PBS tanks;
7. 6 NYCRR 613.6(a) and (c), by failing to document monthly inspections of the nine 275-gallon PBS tanks;
8. 6 NYCRR 614.9(c), by failing to apply surface coating to the nine 275-gallon PBS tanks;
9. 6 NYCRR 360-13.1(b), by storing more than one thousand waste tires at the site without a permit;
10. ECL 27-1911(1), by burying waste tires at the site;
11. 6 NYCRR 360-1.5(a), by disposing of solid waste at the site;
12. 6 NYCRR 374-2.3(c)(2) and 6 NYCRR 374-2.3(c)(8), by storing used oil in noncompliant containers and tanks;
13. ECL 27-1701(3)(a), by disposing lead acid batteries at the site;
14. ECL 17-0505 and 6 NYCRR 750-1.4(a), by discharging pollutants into the groundwater through floor drains without a permit;
15. 6 NYCRR 372.2(a)(2), by failing to make hazardous waste determinations related to wastes generated on-site; and
16. 6 NYCRR 373-1.2(a), by operating a hazardous waste management facility without a permit.

(see Complaint at 20-28, Causes of Action 1-8) <sup>1</sup>.

Staff requests that I issue an order: (i) finding that respondents committed each of the violations alleged; (ii) finding that respondent Biss, individually and in his capacity as an officer of Bissco Holding, committed each of the violations; (iii) holding that respondents Bissco Holding and Biss are jointly and severally liable for the violations; (iii)

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<sup>1</sup> The citations in staff's complaint are based on former parts 612, 613 and 614 of 6 NYCRR. In September 2015, after this proceeding was commenced, Parts 612 and 614 of 6 NYCRR were repealed and Part 613 was revised extensively. The regulatory requirements at issue here and which are referenced by the former regulatory sections have been carried forward in the revised regulations that were effective on October 11, 2015.

assessing against respondents jointly and severally a civil penalty in the amount of one hundred twenty-two thousand two hundred fifty dollars (\$122,250); (v) reserving to the Department the right to bring further proceedings against respondents to compel remediation of the facility beyond the cleanup work at the site undertaken by the United States Environmental Protection Agency (USEPA); (vi) reserving to the Department the right to bring further proceedings against respondents to cover costs, expenses, damages, natural resource damages and other expenditures; and (vii) granting such other and further relief as may be appropriate (see Complaint at 30-31, Wherefore Clause ¶¶ I-VII).

Department staff commenced this proceeding by serving on respondents a notice of hearing and complaint dated February 10, 2014. Respondents did not answer the complaint. Department staff thereafter served respondents a notice of default hearing dated August 5, 2014, attaching a copy of the notice of hearing and complaint, and advising respondents that a hearing would be held on September 4, 2014 at the Department's Region 5 offices located in Warrensburg, New York.

Administrative Law Judge (ALJ) Michael S. Caruso of the Department's Office of Hearings and Mediation Services was assigned to this matter. Respondents did not appear at the hearing. The ALJ kept the record open after the hearing to allow staff to supplement the record with documents requested at the hearing, and to allow staff to provide further notice to respondent Bissco Holding, as required by CPLR 3215(g)(4). The record closed on November 13, 2014. ALJ Caruso prepared the attached hearing report, which I adopt as my decision in this matter, subject to my comments below.

## **II. DISCUSSION**

### **A. Service Issues**

The ALJ, in his hearing report, addressed the proper service of a notice of hearing and complaint, as well as proper service of notices of default hearing and default motions, on individual respondents and corporate entity respondents (see Hearing Report at 12-15).

1. Service of Notice of Hearing and Complaint

Staff's service of the notice of hearing and complaint on respondents satisfied the legal requirements. Staff personally served the notice of hearing and complaint papers on respondent Biss, and personally served these papers on respondent Bissco Holding by serving the Secretary of State pursuant to section 306 of the Business Corporation Law (BCL) (see Hearing Report at 11, Finding of Fact No. 41). Neither respondent answered the complaint nor otherwise appeared in the proceeding.

2. Service of Notice of Default Hearing

Once an administrative enforcement proceeding has been commenced and jurisdiction has been obtained over a respondent through the proper service of a notice of hearing and complaint, service of subsequent papers in the proceeding is governed by CPLR 2103 (see 6 NYCRR 622.6[a]). Where, as here, respondents have not appeared by an attorney, the CPLR authorizes several ways to serve papers on a party (see CPLR 2103[c]). In addition, where staff seeks a default judgment, staff is required to serve the default-related papers on all respondents (see Matter of Dudley, Decision and Order of Commissioner, July 24, 2009, at 1-2). Where a defaulting respondent is a corporation, CPLR 3215(g)(4) is to be followed if jurisdiction was obtained over a corporation by service of the notice of hearing and complaint on the Secretary of State (see Hearing Report at 13).

■ Respondent Biss

On August 7, 2014, staff sent the notice of default hearing and supporting papers to respondent Biss by first class mail (see Hearing Report at 11-12, Finding of Fact No. 42). The August 7, 2014 first class mail service on respondent Biss satisfied CPLR 2103(c) and Dudley.<sup>2</sup>

■ Respondent Bissco Holding

With respect to respondent Bissco Holding, Department staff attempted to serve the notice of default hearing and supporting papers by delivering two copies of the papers to the Secretary of State on August 8, 2014 (see Hearing Report at 11-12, Finding of Fact No. 42). The ALJ notes that service of papers on the

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<sup>2</sup> Although not necessary, staff also utilized other methods for service of the notice of default hearing and supporting papers (see Hearing Report at 11-12 [Finding of Fact No. 42], and Hearing Report at 13).

Secretary of State is not authorized by CPLR 2103 (see Hearing Report at 15). In addition, the ALJ found that staff had not satisfied the requirements of CPLR 3215(g)(4) (see Hearing Report at 13-15).

Accordingly, ALJ Caruso directed Department staff to provide the additional service and notice on respondent as required by CPLR 3215(g)(4) (see Hearing Report at 12 [Finding of Fact No. 44] and Hearing Report at 15; see also Hearing Ex. 43). Staff provided the required service and notice on respondent Bissco Holding, satisfying both CPLR 3215(g)(4) and Dudley (see Hearing Report at 15).

Neither respondent Biss nor respondent Bissco Holding responded to the service of the notice of default hearing.

#### **B. Liability, Default Judgment and Remedial Relief**

Respondents failed to file answers to the complaint served by Department staff in this matter, failed to appear at a pre-hearing conference scheduled for March 13, 2014, and failed to appear for the default hearing scheduled in the matter on September 4, 2014 (see Hearing Report at 12, Finding of Fact No. 43).

Staff has satisfied both the procedural and evidentiary requirements for obtaining a default judgment (see Hearing Report at 16-22; see also 6 NYCRR 622.15[b] [procedural requirements for default judgment] and Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3 [staff seeking default judgment must "provide proof of the facts sufficient to support the claim"], respectively). I therefore adopt the ALJ's findings of fact and conclusions of law with respect to respondents' liability, subject to my comments below.

I concur with the ALJ's conclusion that the evidence and reasonable inferences to be drawn therefrom support a finding that respondent Biss is personally liable as the responsible corporate officer of respondent Bissco Holding. The entity information sheet of respondent Bissco Holding on file with the Secretary of State reflects that respondent Biss is Chief Executive Officer of the corporation (see Hearing Exs. 12A and 12B).

Lieutenant Karen Staniewski of the Department's Bureau of Environmental Crimes Investigation testified that, during a

meeting with respondent Biss, he informed her that he had worked at the site beginning when he was seven years old, and managed the operations at the site from at least January 1, 2000 (see Hearing Report at 5, Finding of Fact No. 7). Lt. Staniewski also testified that, during the criminal investigation of the site, a former employee at the site told her that the business was all under the control of respondent Biss (see Hearing Report at 6, Finding of Fact No. 8). This is proof sufficient to establish that respondent Biss can be held personally liable as the responsible corporate officer for the violations by respondent Bissco Holding (see Matter of Supreme Energy Corporation, Supreme Energy, LLC and Frederick Karam, Decision and Order of the Commissioner, April 11, 2014, at 25-26).

As the ALJ noted, staff did not, however, establish specific acts committed by Biss, and the site was not inspected by any of the hearing witnesses while it was still operating (see Hearing Report at 19). The record reflects, however, that respondent Biss was charged individually with several criminal violations, for causing the release of hazardous waste into the environment, for disposing of solid waste at the site without a permit, and for storing more than 1,000 waste tires without a permit. Biss pleaded guilty to the violation relating to the release of hazardous waste into the environment at the site (see id. at 11, Finding of Fact No. 39; see also Hearing Ex. 39).

The evidence, and inferences drawn therefrom, establish that respondent Biss is personally liable, as a responsible corporate officer, for all of the violations found by the ALJ.

With respect to the violations alleged in staff's first cause of action relating to the PBS tanks at the facility, the ALJ found that respondents failed to close nine PBS tanks. The ALJ concluded, however, that staff proved PBS violations with respect to color coding fill ports, gauges or alarms, labeling, secondary containment and surface coating only as to six of those tanks.<sup>3</sup> In addition, the ALJ found nothing in the record to support the allegation that monthly inspections were not performed by respondents (see Hearing Report at 17).

The record reflects that the USEPA, beginning in October 2012, conducted an assessment of the conditions at the site and performed a removal action involving, among other things,

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<sup>3</sup> The ALJ notes that the USEPA had identified and mapped locations of eleven aboveground PBS tanks at the site, but that the Department staff's complaint alleged that there were nine PBS tanks at the site (see Hearing Report at 6 [Finding of Fact No. 13a & fn 2] and Hearing Report at 17).

removal of tanks, drums and containers, waste tires, used oil, and hazardous waste fluids (see Hearing Report at 6-9, Findings of Fact Nos. 12-23).

Department staff's complaint does not request that I order any remedial relief, but asks that the order in this matter specifically reserve the right of the Department to compel remediation of the facility beyond the USEPA cleanup work at the site by the USEPA, and the right to bring further proceedings against respondents to cover costs, expenses, damages, natural resource damages and other expenditures. It is unnecessary to include a reservation of such rights in this decision and order; the Department already has the right to seek further relief from respondents, should additional circumstances warrant. This decision and order is without prejudice to any remedial relief to which the Department may be entitled (see Hearing Report at 27).

### **C. Civil Penalty**

Department staff has requested, and the ALJ recommends, that I impose a civil penalty in the amount of one hundred twenty-two thousand two hundred fifty dollars (\$122,250).

Staff and the ALJ have provided a claim-by-claim analysis of the proposed penalties (see Hearing Report at 22-27; see also Complaint at 29-30, ¶ 136, Tables 1-3; Proposed Order at 16-20 [referring to the following sources for calculation of penalties: (i) for PBS and water violations: ECL 71-1929(1) and the Department's "Petroleum Bulk Storage Enforcement Policy-Penalty Schedule," DEE-22; (ii) for solid waste violations: ECL 71-2703(1)(b) and the Department's "Solid Waste Enforcement Policy," OGC 8; and (iii) for hazardous waste violations: ECL 71-2705, and the U.S. EPA "RCRA Civil Penalty Policy"]]). According to the ALJ, the total maximum statutory penalty in this proceeding would exceed \$200,000,000 (see Hearing Report at 27).

I find that the penalty of one hundred twenty-two thousand two hundred fifty dollars (\$122,250) requested by staff and recommended by the ALJ is authorized and appropriate based upon the record of this proceeding. This case involves multiple violations of petroleum bulk storage, solid waste, hazardous waste and water pollution statutes and regulations. The record reflects that respondents operated the site essentially without concern for the environment, never sought permits that were required for their activities, and then simply abandoned the

site. The conditions at the site - including thousands of waste tires, groundwater contamination, many drums, tanks and other containers containing, among other things, used oil and hazardous waste fluids - were of such concern that USEPA conducted a removal action to remediate the site.

### **III. Conclusion**

I adopt the ALJ's recommendations to (i) grant Department staff's motion for default judgment; (ii) hold, based upon the proof adduced at the hearing, that respondents are jointly and severally liable for the violations proven at hearing; and (iii) direct respondents to pay a civil penalty in the amount of one hundred twenty-two thousand two hundred fifty dollars (\$122,250).

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is denied in part and granted in part as to the first cause of action, and otherwise granted as to the remaining (second through eighth) causes of action. By failing to answer or appear in this proceeding, respondents Bissco Holding, Inc. and Stephen S. Biss waived their right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondents Bissco Holding, Inc. and Stephen S. Biss are adjudged to have violated<sup>4</sup>:
  - A. 6 NYCRR 612.2(a)(1), by failing to register the PBS facility located at 4724 Route 50 in the Town of Northumberland, Saratoga County, New York;
  - B. 6 NYCRR 613.9(b), by failing to close nine PBS tanks;
  - C. 6 NYCRR 613.3(b)(1), by failing to color code fill ports on six PBS tanks;

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<sup>4</sup> As noted, *supra* at 2 fn 1, the violations of parts 612, 613 and 614 of 6 NYCRR reference the regulatory sections as numbered prior to October 11, 2015.



- D. 6 NYCRR 613.3(c)(3)(i), by failing to have gauges or alarms on six PBS tanks;
  - E. 6 NYCRR 613.3(c)(3)(ii), by failing to properly label six PBS tanks;
  - F. 6 NYCRR 613.3(c)(6)(i)(a), by failing to install secondary containment for six PBS tanks;
  - G. 6 NYCRR 614.9(c), by failing to apply surface coating to six PBS tanks;
  - H. 6 NYCRR 360-13.1(b), by storing more than 1,000 waste tires at the site without a permit;
  - I. ECL 27-1911(1), by burying waste tires on site;
  - J. 6 NYCRR 360-1.5(a), by disposing of solid waste at the site without a permit;
  - K. ECL 27-1701(3)(a), by disposing lead-acid batteries at the site;
  - L. 6 NYCRR 374-2.3(c)(2) and 374-2.3(c)(8), by improperly storing used oil;
  - M. ECL 17-0505 and 6 NYCRR 750-1.4(a), by discharging pollutants through the floor drains into the groundwater without a permit;
  - N. 6 NYCRR 372.2(a)(2), by failing to make hazardous waste determinations related to waste generated on-site; and
  - O. 6 NYCRR 373-1.2(a), by operating a hazardous waste management facility without a permit.
- III. Based upon record evidence, respondents Bissco Holding, Inc. and Stephen S. Biss are jointly and severally liable for the violations identified in paragraph II of this decision and order. I hereby impose upon respondents Bissco Holding, Inc. and Stephen S. Bliss, jointly and severally, a civil penalty in the amount of one hundred twenty-two thousand two hundred and fifty dollars (\$122,250).

IV. Within thirty (30) days of the service of this decision and order upon respondents Bissco Holding, Inc. and Stephen S. Biss, respondents shall pay the civil penalty in the amount of one hundred twenty-two thousand two hundred and fifty dollars (\$122,250) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.

V. The penalty payment shall be sent to the following address:

Office of General Counsel  
NYS Department of Environmental Conservation  
Region 5  
1115 NYS Route 86, P.O. Box 296  
Ray Brook, New York 12977-0296  
Attn: Scott Abrahamson, Esq.

VI. The provisions, terms and conditions of this decision and order shall bind respondents Bissco Holding, Inc. and Stephen S. Biss, and their agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Basil Seggos  
Commissioner

Dated: July 24, 2017  
Albany, New York

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

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In the Matter of the Alleged Violations of Articles 17 and 27 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) Parts 360, 372, 374, 612, 613, and 614

**HEARING  
REPORT**

-by-

**BISSCO HOLDING, INC., also known as "BissCo" HOLDING, INC., and STEPHEN S. BISS, individually and in his capacity as officer of BISSCO HOLDING, INC.,**

DEC Case No.  
R5-20120627-2006

Respondents.

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Procedural History

Respondent Bissco Holding, Inc. (respondent Bissco) is the owner of real property located at 4724 Route 50, Town of Northumberland, Saratoga County, New York (the site). Respondent Stephen S. Biss (respondent Biss) is the chief executive officer of respondent Bissco. The site contains a closed automotive repair and service business known as Scott's Auto Sales. Staff of the Department of Environmental Conservation (Department or DEC) served respondents with a notice of hearing and complaint dated February 10, 2014, alleging violations of:

1. 6 NYCRR 612.2(a)(1), for failing to register as a petroleum bulk storage (PBS) facility (First cause of action);
2. 6 NYCRR 613.9(b), for failing to close nine 275-gallon PBS tanks (First cause of action);
3. 6 NYCRR 613.3(b)(1), for failing to color code the fill ports on nine 275-gallon PBS tanks (First cause of action);

4. 6 NYCRR 613.3(c)(3)(i), for failing to install gauges or high level alarms on nine 275-gallon PBS tanks (First cause of action);
5. 6 NYCRR 613.3(c)(3)(ii), for failing to mark nine 275-gallon PBS tanks with their respective design or working capacity and identification number (First cause of action);
6. 6 NYCRR 613.3(c)(6)(i)(a), for failing to install secondary containment for nine 275-gallon PBS tanks (First cause of action);
7. 6 NYCRR 613.6(a) and (c), for failing to document monthly inspections of nine 275-gallon PBS tanks (First cause of action);
8. 6 NYCRR 614.9(c), for failing to apply surface coating to nine 275-gallon PBS tanks (First cause of action);
9. 6 NYCRR 360-13.1(b), for storing more than one thousand waste tires at the site without a permit (Second cause of action);
10. ECL 27-1911(1), for burial of waste tires at the site (Second cause of action);
11. 6 NYCRR 360-1.5(a) for disposing of solid waste at the site (Third cause of action);
12. 6 NYCRR 374-2.3(c)(2) and 6 NYCRR 374-2.3(c)(8), for storing used oil in noncompliant containers and tanks (Fourth cause of action);
13. ECL 27-1701(3)(a), for disposing lead acid batteries at the site (Fifth cause of action);
14. ECL 17-0505 and 6 NYCRR 750-1.4(a), for discharging pollutants into the groundwater through floor drains without a permit (Sixth cause of action);
15. 6 NYCRR 372.2(a)(2), for failing to make hazardous waste determinations related to wastes generated on-site (Seventh cause of action); and
16. 6 NYCRR 373-1.2(a), for operating a hazardous waste management facility without a permit (Eighth cause of action).

The complaint seeks an order of the Commissioner: (1) finding respondent Bissco committed the violations alleged in the complaint; (2) finding respondent Biss, individually and in his capacity as an officer of Bissco Holding, Inc., committed each of the violations alleged in the complaint; (3) holding respondents jointly and severally liable for the above referenced violations; (4) assessing a civil penalty in the amount of \$122,250 jointly and severally against respondents; (5) reserving the Department's right to bring further proceedings against respondents to compel remediation of the

site beyond the clean-up completed by United States Environmental Protection Agency (EPA); (6) reserving the Department's rights to bring further proceedings against respondents to cover costs, expenses, damages, natural resource damages, and other expenditures as provided by applicable law and regulations; and (7) for such other and further relief as the Commissioner may deem appropriate. Department staff does not request any remedial relief.

Service of the notice of hearing and complaint was made by personal service on respondent Biss on February 21, 2014. Service of the notice of hearing and complaint was made by personal service on respondent Bissco by service on the Secretary of State pursuant Business Corporation Law (BCL) § 306 on February 18, 2014. The notice of hearing also informed respondents that a pre-hearing conference was scheduled for March 13, 2014 at 10:00 a.m. at the Department's Region 5 offices located at 1115 NYS Route 86, Ray Brook, New York. Department staff also provided additional service of the notice of hearing and complaint by mailing the papers to respondent Bissco on February 12, 2014.

Department staff served respondents a notice of hearing - default (notice of default hearing) dated August 5, 2014, which stated that a default hearing was scheduled for September 4, 2014 at 10:00 a.m. at the Region 5 sub-office located at 232 Golf Course Road, Warrensburg, New York. A copy of the notice of hearing and complaint was attached to the notice of default hearing as Exhibit 1 and a proposed order was attached as Exhibit 2. Service on respondent Biss of the notice of default hearing and attachments was made by regular and certified mail on August 7, 2014, as well as by affixing the notice and attachments to the front gate of respondent Biss's residence on August 20, 2014 and mailing the papers to him on August 21, 2014 pursuant to CPLR 308(4). The certified mail was received by respondent Biss on August 12, 2014.

Department staff served respondent Bissco the notice of default hearing and attachments by serving the Secretary of State on August 8, 2014. Pursuant to CPLR 3215(g)(4), Department staff attempted additional service of the notice of default hearing and attachments on respondent Bissco by priority mail on August 7, 2014, but the mailing was returned and marked "Not Deliverable as Addressed Unable to Forward."

Respondents failed to attend the pre-hearing conference or file an answer to the complaint. As stated in the notice of

default hearing, on September 4, 2014, a hearing was convened before the undersigned Administrative Law Judge (ALJ) of the Department's Office of Hearings and Mediation Services (OHMS) at the Department's Region 5 sub-office at 10:30 a.m. Department staff was represented by Scott Abrahamson, Esq., Assistant Regional Attorney, Region 5. No one appeared on behalf of respondents.

Pursuant to 6 NYCRR 622.15, Department staff orally moved for a default judgment based upon respondents' failure to answer the complaint, provided proof of service on respondents, proved that respondents failed to answer, and provided a proposed order. Department staff also sought judgment on the merits. In support of its motion, Department staff called five witnesses: Michael DiPietro, Engineering Geologist 2 in the Division of Environmental Remediation (DER); Kevin Wood, Environmental Engineer 2 in the Division of Materials Management; Steve Paszko, DER Environmental Engineer 1; Andrew Luce, Environmental Engineering Technician 3 in the Division of Water; and Lt. Karen Staniewski, Division of Law Enforcement - Bureau of Environmental Crimes Investigation. All of the witnesses called are employees in the Department's Region 5 office.<sup>1</sup> In addition, Department staff submitted forty-three exhibits, all of which were received in evidence (see Exhibit Chart, attached hereto).

I kept the record open until November 13, 2014, to provide Department staff time to supplement the trial record (Exhibits 12 and 15), provide missing or incorrectly copied pages from Exhibit 21, and provide court records related to respondent Biss's arrest, plea and disposition. In addition, by letter dated October 16, 2014, I directed Department staff to serve respondents Bissco and Biss with an additional notice of default hearing with exhibits (including the notice of hearing) by first class mail to respondents' last known addresses accompanied by a notice that respondent Bissco was served the notice of hearing and complaint by service on the Secretary of State pursuant to BCL § 306(b). In response, Department staff provided Exhibits 39 through 43 (see attached Exhibit Chart).

The hearing record also includes correspondence from Assistant Regional Attorney Scott Abrahamson to ALJ Richard Wissler of OHMS dated August 7, 2014, the notice of default hearing dated August 5, 2014, the notice of hearing and complaint dated February 10, 2014, the proposed order, and correspondence from the undersigned to Assistant Regional Attorney Scott Abrahamson dated October 16, 2014.

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<sup>1</sup> Lt. Staniewski has since transferred to the Department's Region 3 offices.

In addition, Department staff orally moved to amend its complaint to correct the table at the top of page 10 of the complaint as the numbers in the second and third columns were reversed and to amend paragraph 90 of the complaint to reflect that 288 cubic yards of solid waste had been disposed rather than 100 cubic yards as stated. As neither of these amendments/corrections prejudiced the respondents or increased respondents' potential liability, I granted Department staff's motion to amend at the hearing.

#### Findings of Fact

1. Respondent Bissco is the owner of real property located at 4724 Route 50, Town of Northumberland, Saratoga County, New York (site). (Staff Exhibits 14 and 15.)
2. Respondent Bissco is an active domestic business corporation in the State of New York. (Staff Exhibits 12 and 13.)
3. Respondent Biss resides at 270 County Route 52, Greenwich, New York, and is approximately 65 years old. (Staff Exhibit 3.)
4. Respondent Biss is the chief executive officer of respondent Bissco. (Staff Exhibit 12.)
5. On January 1, 2000, Stephen J. Biss and Iris Biss, by deed, transferred all right, title and interest in the "piece and parcel of real property . . . comprising the Scott's Auto Sales business" (the site) to respondent Bissco, the site's current owner. This deed is recorded in Saratoga County Clerk's Office, at Book 1577, Page 726. (Staff Exhibit 14.)
6. From at least January 1, 2000, respondents Bissco and Biss operated an automotive repair and service business at the site known as Scott's Auto Sales, until respondents abandoned the site in 2009. (Staff Exhibit 14; Testimony of Lt. Karen Staniewski; Complaint Exhibits 23 and 30.)
7. Respondent Biss worked at the site beginning when he was seven years old, and managed the operations at the site since at least January 1, 2000. (Testimony of Lt. Karen Staniewski.)

8. During the Department's criminal investigation of the site, Lt. Staniewski learned from a former employee at the site that the business located at the site was all under the control of respondent Biss. (Testimony of Lt. Karen Staniewski.)
9. Respondents abandoned the site in 2009 and anything of value (e.g. tools, equipment, office supplies, and parts) was removed from the premises. (Testimony of Michael DiPietro and Lt. Karen Staniewski.)
10. Approximately two years after the site was abandoned, C.T. Male Associates prepared a "Phase II Environmental Site Assessment, Scott's Auto Sales, 4724 Route 50, Town of Northumberland, Saratoga County, New York, NYSDEC Spill No. 1109982" dated December 1, 2011 (Phase II ESA) for TD Bank, N.A. and filed a spill report with the Department. (Testimony of Michael DiPietro; Staff Exhibit 21.)
11. Following receipt of the spill report and Phase II ESA on December 15, 2011, Department staff inspected the site on February 28, 2012. (Testimony of Kevin Wood, Steve Paszko and Andrew Luce.)
12. At the request of DEC, the United States Environmental Protection Agency (EPA) began investigating the site in 2012 along with Department staff. (Testimony of Michael DiPietro and Kevin Wood; Staff Exhibits 16-20; 22-24; 27-34; and 37; Complaint Exhibits 23 and 30.)
13. The Phase II ESA and the DEC and EPA inspections and investigations revealed the following:
  - a. Nine 275-gallon, one 290-gallon and one 550-gallon aboveground petroleum bulk storage tanks were located at the site (Staff Exhibit 21 at 14-15, 23 and Figure 2; Testimony of Michael DiPietro, Kevin Wood and Steve Paszko; and Staff Exhibit 37); <sup>2</sup>
  - b. Twenty-eight 1-gallon containers, thirty-nine 5-gallon containers, fourteen containers ranging from 18 to 35+/-

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<sup>2</sup> Staff Exhibit 21, the Phase II ESA, identified and mapped the locations of eleven aboveground PBS tanks as the site (*id.* at § 5.0 and Figure 2). The complaint alleges there were nine PBS tanks at the site (First cause of action). Steve Paszko, a Department engineer, testified that during his inspection so of the site he inspected six of the aboveground PBS tanks - four 275-gallon tanks located within a small shed and one 275-gallon tank immediately outside the shed as well as a 550-gallon tank at the rear of the building.



- gallons and sixty-four 55-gallon drums were located within the site that contained fluids ranging from residual product to appearing full, as well as numerous containers and drums that appeared empty (Staff Exhibit 21 at 14 and Appendix F; Testimony of Michael DiPietro and Kevin Wood; and Staff Exhibits 20, 23, 24, 30-34, and 37);
- c. Many of the containers, drums and tanks contained used oil (Staff Exhibit 21 at 14, 15, 23 and Appendix F; Testimony of Steve Paszko);
  - d. More than 3,000 gallons of the materials stored in the petroleum bulk storage tanks, drums and containers constituted hazardous waste (Staff Exhibit 21 at Appendix F; Testimony of Kevin Wood; Staff Exhibit 36; Complaint Exhibit 30);
  - e. 3,000 to 5,000 waste tires were located at the site (Department Staff Exhibit 21 at 13 and 23; Testimony of Kevin Wood; Staff Exhibits 27, 28, and 33; Complaint Exhibit 30);<sup>3</sup>
  - f. Soil and groundwater at the site were contaminated with petroleum, gasoline and solvents (Staff Exhibit 21 at 12-13, 15-21, Appendix G (soil) and Appendix H (groundwater); Testimony of Michael DiPietro);
  - g. Floor drains located within the work bays of the garage discharged pollutants to the soil and groundwater (Staff Exhibit 21; Testimony of Michael DiPietro and Andrew Luce; Staff Exhibits 17-19; Complaint Exhibit 20);
  - h. Soil samples from one of the floor drains exhibited concentrations of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) in excess of the Department's 6 NYCRR 375-6.8(a)unrestricted soil cleanup objectives (Staff Exhibit 21 at 10-13 and 18; Testimony of Michael DiPietro);
  - i. Groundwater samples from the vicinity of the floor drains exhibited concentrations of VOCs and SVOCs in excess of the Department's 6 NYCRR 703.5 Table 1 groundwater quality standards (Staff Exhibit 21 at 19-21; Testimony of Michael DiPietro and Andrew Luce);
  - j. Solid wastes, including waste tires and lead acid batteries, were scattered about the site; and in one

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<sup>3</sup> Staff Exhibit 21, the Phase II ESA, estimated there to be 2,000 to 3,000 waste tires at the site (*id.* at § 3.7 ). The complaint alleges there were 3,000 to 5,000 waste tires at the site (Second cause of action). Kevin Wood, a Department engineer with years of experience estimating the number of tires in waste tire stockpiles for the Department, testified that he measured the waste tire stockpiles and estimated there to be 3,000 to 5,000 waste tires at the site. The EPA estimated there were 5,000 waste tires to be removed (see Complaint Exhibit 30 at § 2.2.1.2).

- area partially buried adjacent to a stream (Staff Exhibit 21 at 14; Testimony of Michael DiPietro, Kevin Wood and Steve Paszko; and Staff Exhibit 29);
- k. Drums and other containers were buried on the site adjacent to the stream (Testimony of Michael DiPietro, Kevin Wood and Steve Paszko; and Complaint Exhibits 23 and 30); and
  - l. EPA determined that the site was a threat to human health and the environment, and pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC § 9601 et. seq., EPA commenced a removal action to remove the immediate threats to human health and the environment (Testimony of Michael DiPietro; Staff Exhibit 36; Complaint Exhibits 23 and 30).
14. After determining the contents of each container, drum and tank, EPA removed all the waste liquids and materials from the containers, drums and tanks and consolidated the materials inside the garage at the site before shipping the waste fluids off-site for proper disposal. (Testimony of Michael DiPietro; Staff Exhibits 25, 26 and 36; Complaint Exhibits 23 and 30.)
  15. EPA removed over 3,000 gallons of hazardous waste fluids from the site, as well as all the containers, drums and above ground storage tanks. (Testimony of Michael DiPietro and Kevin Wood; Staff Exhibits 25, 26 and 36.)
  16. EPA also removed all the waste tires and other solid waste (car parts, chassis, and so on) from the site. (Testimony of Michael DiPietro; Staff Exhibits 25 and 26; Complaint Exhibit 30.)
  17. The EPA expended approximately \$125,000 removing the hazardous liquid wastes, used oils, solid waste, waste tires, drums, containers, and tanks from the site. (Testimony of Michael DiPietro.)
  18. The petroleum bulk storage capacity at the site exceeded 1,100 gallons. In particular, nine petroleum storage tanks of 275-gallon capacity, one petroleum storage tank of 290-gallon capacity and one petroleum storage tank of 550-gallon capacity were located above ground with a total capacity of 3,315 gallons. (Staff Exhibit 21 at 14, 15, 23 and Figure 2; Testimony of Michael DiPietro and Steve Paszko; and Staff Exhibit 37.)

19. Respondent Bissco failed to register the petroleum bulk storage facility with the Department. (Testimony of Steve Paszko.)
20. Department staff verified the existence of five 275-gallon tanks and one 550-gallon tank, and testified that these six tanks did not have color coded fill ports; secondary containment; proper labeling; gauges or alarms; or surface coating. (Testimony of Steve Paszko; Staff Exhibit 37.)
21. Respondents failed to properly close any of the eleven PBS tanks. (Testimony of Steve Paszko; Staff Exhibit 21 at 14, 15 and 23; Complaint Exhibits 23 and 30.)
22. As a result of respondents' failure to close the tanks, EPA performed a hazardous waste determination of the tanks' contents in 2012 and 2013 and removed the contents before removing the tanks for proper disposal in 2013. (Testimony of Michael DiPietro; Staff Exhibits 22, 23, 24 and 36; Complaint Exhibit 30.)
23. Respondents had stored over 3,000 gallons of waste fluids in containers, drums and tanks, which constituted hazardous waste. For example, flammable waste liquids (such as xylene, toluene, benzene, naphthalene, methyl t-butyl ether, and acetone), corrosive waste liquids (such as hydrochloric acid and sulfuric acid), hazardous waste liquids (such as lead and tetrachloroethylene) and waste oils were removed by EPA. (Testimony of Kevin Wood; Staff Exhibits 20, 23, 24, 30-34, 36, and 37; Complaint Exhibit 30.)<sup>4</sup>
24. Respondents managed hazardous waste at the site without a permit. (Testimony of Kevin Wood; Staff Exhibit 36.)
25. Respondents did not make hazardous waste determinations. (Testimony of Kevin Wood.)
26. Respondents had 3,000 to 5,000 waste tires stored at the site. (Testimony of Kevin Wood; Staff Exhibits 27 and 28; Complaint Exhibit 30 at 2.2.1.2; see also footnote 2.)
27. Respondents have never applied for or received a solid waste management facility permit to operate a waste tire

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<sup>4</sup> Staff Exhibit 36, Uniform Hazardous Waste Manifest, lists the types and amounts of hazardous wastes removed from the site.

storage facility at the site. (Testimony of Kevin Wood.)

28. Respondents disposed of approximately 288 cubic yards of solid waste at the site including waste tires, scrap metals, car parts and accessories, wiring, hoses, bottles, cans, containers and 55-gallon drums.<sup>5</sup> (Testimony of Kevin Wood; Staff Exhibit 29.)
29. Some of the solid waste, including two lead-acid batteries, was buried along with a number of waste tires in an embankment adjacent to a stream. (Testimony of Kevin Wood; Staff Exhibit 29; Complaint Exhibit 30.)
30. The remaining solid waste, including waste tires, scattered about the site had accumulated for more than 18 months. (Testimony of Kevin Wood; Staff Exhibits 27 and 28.)
31. Solid waste was disposed at the site. (Testimony of Kevin Wood; Staff Exhibits 27, 28, and 29.)
32. Respondents have never applied for or received a solid waste management facility permit to operate a solid waste disposal facility at the site. (Testimony of Kevin Wood.)
33. Respondents generated used oil at the site as part of the operation of the auto repair and service business. (Staff Exhibit 21 at 14, 15, 23 and Appendix F; Testimony of Michael DiPietro.)
34. Respondents stored used oil in unlabeled containers of various sizes and materials (for example, metal drums and plastic containers ranging from 5 to 55 gallons) as well as unlabeled aboveground storage tanks. The containers, drums and tanks were exposed to the elements and exhibited varying degrees of age and deterioration. (Testimony of Kevin Wood and Steve Paszko; Staff Exhibits 21, 31, 32, 33, and 37.)
35. Respondents maintained two floor drains in the service bays of the garage at the site. (Testimony of Michael DiPietro; Staff Exhibits 17, 18, 19 and 21; Complaint Exhibit 20.)

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<sup>5</sup> As discussed above, Department staff moved to amend the pleadings to correct the cubic yards of waste alleged to be at the site from 100 cubic yards to 288 cubic yards of waste based on the testimony of Kevin Wood regarding his October 1, 2013 inspection of the site.

36. Contaminants such as VOCs and SVOCs found in gasoline and solvents were discharged from service bays through the floor drains and allowed to enter the soil and groundwater. (Testimony of Michael DiPietro; Staff Exhibit 21.)
37. Respondents do not have a State Pollution Discharge Elimination System (SPDES) Permit to discharge pollutants into the groundwater. (Testimony of Andrew Luce.)
38. Respondent Biss was arrested on March 14, 2014 for violations of the ECL and 6 NYCRR Part 360 at the site. (Testimony of Lt. Karen Staniewski.)
39. Respondent Biss was charged with violation of ECL 71-2710 for causing the release of hazardous waste into the environment at the site, 6 NYCRR 360-1.5(a) for disposing solid waste at the site without a permit, and 6 NYCRR 360-13.1(b) for storing more than 1,000 waste tires at the site without a permit. (Testimony of Lt. Karen Staniewski; Staff Exhibit 39.)
40. On August 5, 2014, in satisfaction of all the criminal charges, respondent Biss pleaded guilty to the first charge of endangering public health, safety or the environment in the fifth degree, a class B misdemeanor. (Testimony of Lt. Karen Staniewski; Exhibit 39.)
41. Service of the notice of hearing and complaint dated February 10, 2014 was made by personal service on respondent Biss on February 21, 2014 and by personal service on respondent Bissco pursuant to BCL § 306 on February 18, 2014. In addition, respondent Bissco was served with an additional notice of hearing and complaint in an attempt to satisfy CPLR 3215(g)(4) on February 12, 2014. The notice of hearing notified respondents that a pre-hearing conference was scheduled for March 13, 2014 at 10:00 a.m. at the Department's Region 5 offices located at 1115 NYS Route 86, Ray Brook, New York. Respondent failed to attend the March 13, 2014 pre-hearing conference. (Staff Exhibits 3, 4 and 5; Hearing Record.)
42. Service of the notice of the default hearing (with the notice of hearing and complaint and a proposed order attached) scheduled for September 4, 2014 at 10:00 a.m. at the Department's Region 5 sub-offices located at 232 Golf

Course Road, Warrensburg, New York, on respondent Biss was made by regular mail and certified mail on August 7, 2014, and the certified mail was received by respondent on August 12, 2014. Respondent Biss was also served pursuant to CLPR 308(4) on August 20 and 21, 2014 by affixing the papers to respondent's front gate and mailing the papers by first class mail to respondent. Service on respondent Bissco was made by personal service on the Secretary of State pursuant to BCL § 306 on August 8, 2014. Pursuant to CPLR 3215(g)(4), Department staff attempted additional service of this notice on respondent Bissco by priority mail, but the notice was returned and envelope marked "Not Deliverable as Addressed Unable to Forward." The notice of default hearing advised respondents that if they failed to appear, Department staff would move on the record for a default judgment against them. (Staff Exhibits 6, 7, 8, 9, 10 and 11; Hearing Record.)

43. Respondents failed to file an answer to the complaint, failed to appear for the pre-hearing conference on March 13, 2014, and failed to appear for the default hearing scheduled in the matter on September 4, 2014, as directed in the notice of default hearing. (Hearing Record.)
44. Additional service of the notice of default hearing with the notice of hearing, complaint, and proposed order attached, consistent with CPLR 3215(g)(4), was made by regular mail on respondent Bissco and respondent Biss, in his capacity as corporate officer, on October 17, 2014. (Staff Exhibits 42 and 43.)
45. Respondents did not respond to the additional service.

## Discussion

### I. Service

Department staff utilized various methods of service in the proceeding that require a discussion on the topic. Service of the notice of hearing and complaint on respondents was uneventful as staff personally served respondent Biss and personally served respondent Bissco by serving the Secretary of State pursuant to BCL § 306 (Staff Exhibits 3 and 4). Jurisdiction was thus obtained. Once jurisdiction is obtained, staff is required to serve motions and other papers pursuant to 6 NYCRR 622.6(a) and CPLR 2103.

To satisfy the Commissioner's directive to serve motions for default judgment on all defaulting respondents (Matter of Dudley, Decision and Order of the Commissioner, July 24, 2009, at 1-2), staff must utilize the methods of service authorized by 6 NYCRR 622.6(a) and CPLR 2103(b) (service on the attorney) or 2103(c) (service on unrepresented respondents). With respect to respondent Biss, Department staff satisfied these service requirements when staff served the notice of default hearing and attachments on him by first class mail on August 7, 2014 (Staff Exhibit 9). The additional service on respondent Biss by certified mail was unnecessary. Moreover, service by certified mail and service by affix and mail pursuant to CPLR 308(4) are not authorized by CPLR 2103. Dudley service, as will be discussed below, was not provided to respondent Bissco.

In addition to service of default motion papers pursuant to Dudley, CPLR 3215(g)(4) must be followed if jurisdiction is obtained against a corporation by service of the notice of hearing and complaint on the Secretary of State.<sup>6</sup> For the purposes of Part 622 enforcement proceedings, CPLR 3215(g)(4) requires Department staff to:

1. Provide additional service of the notice of hearing;
2. By first class mail;
3. To respondent's last known address;
4. At least twenty days before entry of judgment.

The additional service of the notice of hearing may be made at the same time as or after service of process has been made on the Secretary of State, and must include a notice to the defaulting corporation that service of process is being made or has been made on the corporation pursuant to BCL § 306. (CPLR 3215[g][4][ii].)

In this case, Department staff sent the first class mail to respondent Bissco on February 12, 2014 before staff served the Secretary of State the notice of hearing and complaint on February 18, 2014 (compare Staff Exhibit 4 with Exhibit 5). CPLR 3215(g)(4) does not authorize the additional service of the notice of hearing before service of process on the Secretary of State.

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<sup>6</sup> If service of the notice of hearing and complaint was originally made by certified mail or personal delivery to a corporation, staff only needs to provide the papers prescribed by Dudley using the service methods authorized by 6 NYCRR 622.6(a) and CPLR 2103.

Moreover, nothing in the record indicated that respondent Bissco had been provided a notice that the corporation had been served pursuant to BCL § 306 as required by CPLR 3215(g)(4). The record also demonstrated that staff had not made its mailing to respondent Bissco's last known address (see Staff Exhibits 5, 7, 11, 12 and 15). Staff attempted to serve respondent Bissco at the post office box listed by the Department of State for service of process, and it was returned as "Not Deliverable As Addressed Unable To Forward" (see Staff Exhibit 11). Staff also had in its possession the address of respondent Bissco maintained by Saratoga County for real property tax purposes, which is the same address where respondent Biss received his mail and was personally served (see Staff Exhibits 3, 9 and 15). In short, by failing to mail the notice to respondent Bissco's last known address, staff had not satisfied the requirements of CPLR 3215(g)(4).

The additional notice provision of CLPR 3215(g)(4) was enacted because corporate addresses on file with the Department of State for mailing service of process were often incorrect, which resulted in a growing number of court motions to open defaults. The provision was intended to eliminate or greatly reduce what was perceived as "unnecessary and avoidable motion practice."<sup>7</sup>

Those same reasons support providing the additional notice to other business entities whose agent for service of process is the Secretary of State. Staff should provide the notice and additional service required by CPLR 3215(g)(4) when staff has commenced a proceeding against a not-for-profit corporation or limited liability company by serving the Secretary of State pursuant to Not-For-Profit Corporation Law § 306(b) or Limited Liability Company Law § 303(a), respectively.<sup>8</sup>

The reasons that I find staff did not satisfy Dudley service of the default papers on the corporation are two-fold. First, the mailing of the notice of default hearing was returned as undeliverable as addressed. Staff mailed the default papers to the address designated as the principal office of the

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<sup>7</sup> See NYS CLS CPLR 3215, 1990 Recommendations of Advisory Committee on Civil Practice.

<sup>8</sup> See e.g. Matter of Palushaj Properties LLC, Order of the Commissioner, October 27, 2013; Grand Concourse East HDFC (274 Bonner Pl.), Order of the Commissioner, November 27, 2013.



corporation on the Department of State entity information sheet, which was the address for the site (see Staff Exhibit 12).

As the respondents had abandoned the site five years before this proceeding, I find it unlikely such a mailing would be received (and indeed, it was returned as undeliverable). Staff, however, had in its possession the current address the corporation used for real property tax purposes, but did not attempt service on that address (see Staff Exhibit 15). CPLR 2103 requires mailing to an address designated by a respondent for the purpose of mailing, or if none is designated, to the last known address. (CPLR 2103[f][1].) In this case, staff possessed at least two designated addresses, but chose to serve the address on file with the Department of State.

Secondly, Department staff's service of the default papers on the Secretary of State is not authorized by CPLR 2103. The Secretary of State's agency is limited to the receipt of service of process, which by definition is limited to papers served for the "purpose of acquiring jurisdiction of such corporation in any action, proceeding, civil or criminal, whether judicial, [or] administrative." (BCL § 102[a][11].)

As the record was still open, by letter dated October 15, 2014, I directed staff to provide the service and notice required by CPLR 3215(g)(4) on respondent Bissco and respondent Biss, in his capacity as the corporate officer, to respondents' last known addresses. In Ayora v Young, 29 Misc3d 354, 356 [Sup Ct, Queens County 2010], the court allowed the CPLR 3215[g][4] notice to be served after the motion for default was submitted to the court. The notice provided the defaulting defendant twenty days to address its default. The court held that such notice complied with the spirit and intent of the law.

In this case, Department staff provided the additional service of the notice of hearing and notice required by CPLR 3215(g)(4), and included a copy of my October 16, 2014 correspondence, which stated, in part, that if respondents wished to address respondents' default in this matter, they must contact the ALJ within twenty days of the service directed therein (see Staff Exhibit 43).

Because staff served respondent Bissco the additional notice of hearing and notice that the corporation had been served pursuant to BCL § 306 (required by CPLR 3215[g][4]) by first-class mail with the notice of default hearing, complaint and proposed order, I conclude that the service satisfied both CPLR 3215(g)(4) and the Commissioner's directive in Dudley, supra. No response was received from respondents.

## II. Liability

### A. Staff's Burden

The respondents' failure to timely file an answer constitutes a default and a waiver of respondents' right to a hearing (see 6 NYCRR 622.15[a]). Department staff's motion for a default judgment must include proof of service of the notice of hearing and complaint, proof of respondents' failure to file a timely answer, and a proposed order (see 6 NYCRR 622.15[b]). In addition, staff must serve the motion papers on the respondents or their representatives (see Matter of Dudley, Decision and Order of the Commissioner, July 24, 2009).

In the instant proceeding, Department staff has satisfied the requirements of 6 NYCRR 622.15(b) by providing proof of service of the notice of hearing and complaint (see Finding of Fact No. 41), proof of respondents failure to timely answer the amended complaint (see Finding of Fact No. 43) and a proposed order (see Notice of Default Hearing, Exhibit 2). Respondent Bissco received the notice of hearing and complaint on February 18, 2014 and respondent Biss received the notice of hearing and complaint on February 21, 2014. Respondents' answers were due March 10 and March 13, 2014, respectively. The hearing record demonstrates that respondents have not filed an answer. In addition, Department staff served a copy of the notice of default hearing on respondents consistent with the Commissioner's directive in Dudley, supra (see Findings of Fact Nos. 42, 43 and 44). Respondents failed to respond to the additional service directed by the undersigned.

This proceeding is similar to a motion for default judgment that is accompanied by evidentiary affidavits supporting Department staff's allegations. In this instance, Department staff made an oral motion for default judgment and also sought judgment on the merits. Department staff provided testimony and evidence in support of its motion and the allegations of the complaint. As such, the testimony and evidence "may be examined to confirm the factual allegations of the complaint or to otherwise assure the reviewer that the Department has a meritorious claim against the respondent (see e.g. Rovello v Orofino Realty Co., Inc., 40 NY2d 633, 635-636 [1976])." (Matter of Hunt, Decision and Order of the Commissioner, July 25, 2006 at 7.) In addition, to support a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim" (Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013 at 3).

In short, staff may not rely upon the bare allegations of its complaint being deemed admitted and all reasonable inferences drawn therefrom to support staff's motion for a default judgment. More is required. I conclude that the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15, subject to the discussion below.

### 1. PBS Violations

Department staff's allegations and causes of action for the eight violations of the PBS regulations are not entirely supported by the Department's proof. Staff alleged that nine 275-gallon PBS tanks were located at the site, and that eight separate violations apply to each of the nine tanks (see Complaint at 20-21). The proof provided, however, demonstrates that a total of eleven PBS tanks were located at the site (see Finding of Fact No. 13[a] and Staff Exhibit 21). In addition, the PBS tanks were drained, cleaned and removed by the EPA (see Findings of Fact Nos. 14 and 15; and Complaint Exhibit 30 at 2.1.2; Testimony of Michael DiPietro). The allegation that respondents did not properly close nine of the PBS tanks is supported by those facts (see Finding of Fact No. 21).

The proof also demonstrates that the site should have been, but was not, registered as a PBS facility. For the remaining six PBS violations alleged, the proof supports five of those violations for six of the tanks (see Finding of Fact No. 20). The only photograph of PBS tanks is Staff Exhibit 37, which depicts four 275-gallon tanks inside a small shed. In addition, a fifth tank was located immediately outside the shed (Testimony of Steve Paszko). The Department's PBS inspector observed those five tanks plus the 550-gallon tank and provided testimony related to those six tanks (Testimony of Steve Paszko). No other record evidence establishes that the remaining three tanks alleged by staff lacked color coding, gauges, labeling, secondary containment, or surface coating as alleged.

Department staff was aware of the Phase II ESA and the eleven PBS tanks referenced therein, but failed to provide evidence that each of the nine tanks alleged by staff violated each of the regulatory requirements. In addition, I find nothing in the record to support the allegation that monthly inspections were not performed by respondents. Staff's conclusory statement that the allegations of the complaint accurately reflected the conditions at the site is contradicted by staff's admission that staff did not see or inspect all the tanks and did not have access to records at the site.

Accordingly, I conclude that Department staff provided proof sufficient to support staff's claims that respondents failed to register the facility; failed to properly close nine PBS tanks; and, with respect to six PBS tanks, failed to: color code fill ports, install gauges or alarms, label, provide secondary containment and apply surface coating, in violation of 6 NYCRR 612.2(a)(1), 613.9(b), 613.3(b)(1), 613.3(c)(3)(i), 613.3(c)(3)(ii), 613.3(c)(6)(i)(a), and 614.9(c), respectively.

## 2. Solid Waste

Department staff provided proof that respondents stored more than 1,000 waste tires at the site and did not apply for or receive a solid waste management facility permit for such storage, in violation of 6 NYCRR 360-13.1(b) (see Findings of Fact Nos. 13[e], 26 and 27). The record also establishes that waste tires were buried on the site in violation of ECL 27-1911(1) (see Findings of Fact Nos. 13[j], 27, 28, 29, 30 and 31). In addition, staff proved that respondents disposed of solid waste at the site, including waste tires, lead-acid batteries, drums, and car parts, without a permit to do so, in violation of ECL 27-1701(3)(a) and 6 NYCRR 360-1.5 (see id.; see also Finding of Fact No. 32).

## 3. Hazardous Waste

Department staff also provided proof that respondents failed to make hazardous waste determinations for solid waste generated at the site in violation of 6 NYCRR 372.2(a)(2) and operated a hazardous waste management facility without a permit in violation of 6 NYCRR 373-1.2(a) (see Findings of Fact Nos. 13[d], 15, 23, 24 and 25).

## 4. Used Oil

Department staff provided proof that respondents generated used oil in the operation of the site and stored the used oil in unlabeled containers, drums and tanks, in violation of 6 NYCRR 374-2.3(c)(2) and (8) (see Findings of Fact Nos. 13[c], 33 and 34).<sup>9</sup> In addition to being unlabeled, staff provided proof that the tanks were not registered, were not properly closed, and did not have secondary containment systems in place (see Findings of

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<sup>9</sup> Pursuant to 6 NYCRR 374-2.3(c)(2), tanks used for the storage of used oil, regardless of tank size, must comply with various sections of the petroleum bulk storage regulations (see e.g. 6 NYCRR 612.2 through 6 NYCRR 612.4, 6 NYCRR 613.2 through 6 NYCRR 613.9, 6 NYCRR 614.6 and 6 NYCRR 614.12).

Fact Nos. 19, 20, and 21).

## 5. SPDES

Department staff provided proof that respondents discharged pollutants through the floor drains in the garage at the site to groundwater without a SPDES permit, in violation of ECL 17-0505 and 6 NYCRR 750-1.4 (see Findings of Fact Nos. 13[g], 13[i], 36 and 37). Moreover, the record demonstrates that groundwater has been and is contaminated due to the acts of respondents (see Findings of Fact Nos. 13[f], 13[i] and 36).

### B. Liability of respondent Stephen S. Biss

Department staff requests that respondent Biss be found to have committed the violations alleged by staff and found liable for those violations individually and as a corporate officer of respondent Bissco. Staff's proof that respondent Biss was individually liable or liable as a responsible corporate officer is largely circumstantial. Staff has not established specific acts committed by respondent Biss. In fact, with the exception of Lt. Staniewski, Department staff admittedly has had little or no contact with either respondent. The site was not inspected by any of the witnesses while it was still in operation.

Several inferences, however, can be drawn from the record and testimony of Lt. Staniewski. Respondent Biss was the chief executive officer (CEO) of the corporation and stated to Lt. Staniewski that he had worked at Scott's Auto Sales since he was seven years old. The record demonstrates that respondents abandoned the site and left behind an environmental threat that was the cause for an EPA removal action. As the CEO, respondent Biss had direct responsibility for the operations at the site and was in a position to prevent the violations. Lt. Staniewski testified that a former mechanic who worked at Scott's Auto Sales indicated that respondent Biss exercised complete control over the business, implying that respondent Biss controlled the activities at the site. In addition, the Saratoga County Real Property Tax Service lists the address of the owner of the site, Bissco Holding, Inc., as the same address as respondent Biss's residence.

Moreover, in relation to the conditions found at the site, respondent Biss was arrested in his individual capacity and charged with violation of ECL 71-2710 for causing the release of hazardous waste into the environment, 6 NYCRR 360-1.5(a) for disposing solid waste at the site without a permit, and 6 NYCRR 360-13.1(b) for storing more than 1,000 waste tires without a

permit. Respondent Biss pleaded guilty to the first charge, a Class B misdemeanor, in satisfaction of the remaining charges. I find that the reasonable inference that flows from the charges and plea is that respondent Biss, individually and in his capacity as a corporate officer, exhibited control over the activities at the site and was in a position to prevent the violations found herein.

The doctrine of responsible corporate officer liability is well established in Department enforcement proceedings.

"A corporate officer can be held personally liable for violations of the corporate entity that threaten the public health, safety, or welfare (Matter of Galfunt, Order of the Commissioner, May 5, 1993, at 2 [citing United States v Park, 421 US 658 (1975); United States v Dotterweich, 320 US 277 (1943); and United States v Hodges X-Ray, Inc., 759 F2d 557 (6<sup>th</sup> Cir 1985)]). A corporate officer need only have responsibility over the activities of the business that caused the violations (see id.). Galfunt established that it was unnecessary to determine if the corporate officer made any specific decisions concerning the conduct alleged in the violations, only that the officer had direct responsibility for operations and was in a position to prevent the violations (see id.)" (Matter of Supreme Energy Corporation, Supreme Energy, LLC and Frederick Karam, Decision and Order of the Commissioner, April 11, 2014 at 25-26).

The record demonstrates that the violations at this site threaten public health, safety and welfare. The site posed an immediate threat sufficient to warrant the EPA conducting a removal action at the site. Without exception, respondents' operation of the site created or continued violations that could have been prevented. Moreover, groundwater and soil contamination still exist at the site requiring additional remediation. These violations did not occur in a corporate vacuum. The violations occurred or continued while respondent Biss, the chief executive officer of the corporate respondent, was present at the site.

Department staff alleged in its complaint that respondent Biss was the chief executive officer of respondent Bissco, and ran the day to day operations of Scott's Auto Sales at the site.

Staff also alleged that respondent Biss exercised complete control over the site, that his acts and omissions facilitated the violations alleged in the complaint, and that respondent Biss is the corporate officer who should be held liable, along with respondent Bissco, for the violations alleged in the complaint. Department staff also alleged that respondent Biss was the operator of a PBS facility as defined in ECL 17-1003(3) and 6 NYCRR 612.1(16). I agree and conclude that all reasonable inferences that flow from the documentary record (see e.g. Exhibits 12, 15, and 39) and staff testimony support staff's allegations. In short, on this record, the allegations are more likely to be true than not.

I conclude that on this record respondent Biss had direct responsibility for operations that caused the violations and was in a position to prevent the violations. Respondent Biss is personally liable for violations of respondent Bissco in this case. Respondents should be held jointly and severally liable for the violations, as requested by Department staff (see Complaint at 30 - 31, Wherefore Clause ¶ III).

### C. Respondents' Liability

Department staff's proof presents a prima facie case demonstrating respondents Bissco and Biss:

- 1) failed to register the PBS facility in violation of 6 NYCRR 612.2(a)(1);
- 2) failed to close nine out of service PBS tanks in violation of 6 NYCRR 613.9(b);
- 3) failed to color code fill ports on six PBS tanks in violation of 6 NYCRR 613.3(b)(1);
- 4) failed to install gauges or alarms on six PBS tanks in violation of 6 NYCRR 613.3(c)(3)(i);
- 5) failed to properly label six PBS tanks in violation of 6 NYCRR 613.3(c)(3)(ii);
- 6) failed to provide secondary containment for six PBS tanks in violation of 6 NYCRR 613.3(c)(6)(i)(a);
- 7) failed to apply surface coating to six PBS tanks in violation of 6 NYCRR 614.9(c);
- 8) stored more than 1,000 waste tires at the site without a permit in violation of 6 NYCRR 360-13.1(b);
- 9) buried waste tires at the site in violation of ECL 27-1911(1);
- 10) disposed of solid waste at the site, including lead-acid batteries, without a permit in violation of ECL 27-1701(3)(a) and 6 NYCRR 360-1.5(a);

11) improperly stored used oil in violation of 6 NYCRR 374-2.3(c)(2) and (8);

12) discharged pollutants to groundwater without a SPDES permit in violation of ECL 17-0505 and 6 NYCRR 750-1.4(a);

13) failed to make hazardous waste determinations for the solid waste generated at the site in violation of 6 NYCRR 372.2(a)(2); and

14) operated a hazardous waste management facility without a permit in violation of 6 NYCRR 373-1.2(a).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondents; (ii) respondents failed to file an answer to the complaint and failed to appear at a pre-hearing conference scheduled for March 13, 2014, as directed in the cover letter served with the notice of hearing and complaint; and (iii) respondents failed to appear for the default hearing scheduled in the matter on September 4, 2014, as directed in the notice of default hearing. Department staff provided its proposed order as Exhibit 2 to the notice of default hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15 on the violations listed above.

Moreover, the proof adduced at the hearing, conducted in respondents' absence, demonstrates by a preponderance of the evidence that respondents committed the violations listed above. The Department is entitled to judgment upon the facts proven.

### III. Civil Penalties

Department staff indicated during the hearing, and I agree, that the penalty amount of \$122,250 requested by staff is consistent with past practices, the Department's penalty policies and applicable provisions of the ECL. To determine the maximum penalties allowed by law, staff proposed using the time period spanning from the date of the notice of violation, October 8, 2013 to the date of the notice of hearing and complaint, February 10, 2014, totaling 125 days. I adopt staff's 125 days of violation for the purpose of addressing maximum penalties.

Staff requests a total civil penalty amount of \$122,250. Department staff did break down the penalty for each violation alleged to demonstrate that the penalty was justified.



#### A. Staff's First Cause of Action - PBS Violations

On the first cause of action, staff requests penalties in the following amounts:

1. For violation of 6 NYCRR 612.2(a)(1)(failure to register the PBS facility), a civil penalty of \$1,000;
2. For violation of 6 NYCRR 613.9(b)(failure to close nine tanks - \$2,000 per tank), a civil penalty of \$18,000;
3. For violation of 6 NYCRR 612.3(b)(1)(fill ports not color coded on nine tanks - \$100 per port), a civil penalty of \$900;
4. For violation of 6 NYCRR 613.3(c)(3)(i)(no gauge or alarm on nine tanks - \$250 per tank), a civil penalty of \$2,250;
5. For violation of 6 NYCRR 613.3(c)(3)(ii)(nine tanks not properly labeled - \$100 per tank), a civil penalty of \$900;
6. For violation of 6 NYCRR 613.3(c)(6)(i)(a)(no secondary containment for nine tanks - \$1,000 per tank), a civil penalty of \$9,000;
7. For violation of 6 NYCRR 613.6(a)(no monthly inspections on nine tanks - \$500 per tank), a civil penalty of \$4,500; and
8. For violation of 6 NYCRR 614.9(c)(failure to apply surface coating to nine tanks - \$1,500 per tank), a civil penalty of \$13,500.

The total PBS penalty requested by staff is \$50,050. As discussed above, I found that staff only proved seven of the eight PBS violations<sup>10</sup> and five of those seven violations were only applied to six instead of nine tanks.<sup>11</sup> Using staff's methodology, the total penalty would be reduced to \$36,700 for the proven violations. Pursuant to ECL 71-1929(1) the maximum statutory penalty is \$37,500 per day for each violation. Even by reducing the number of violations proven from 64 to 40, the total violations for 125 days would equal a total maximum statutory penalty for the PBS violations of \$187,500,000.

Rather than reducing the penalty requested by staff, I believe the total PBS penalty requested by staff is justified on

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<sup>10</sup> As discussed above, staff did not prove that respondents failed to conduct monthly inspections.

<sup>11</sup> Failing to register applies to the entire facility and staff's proof demonstrated nine tanks were not properly closed (see Findings of Fact Nos. 18, 19 and 21).

the facts proven. Given the statutory maximum penalty, the fact that respondents abandoned the site and the federal government expended taxpayer dollars to empty, clean and remove the PBS tanks, and that all the PBS violations are part of a single cause of action, I conclude that a \$50,500 penalty on the first cause of action is supported by the record.

B. Staff's Second Cause of Action - Unpermitted Waste Tire Storage and Disposal

On the second cause of action, staff requests penalties in the following amounts:

1. For violation of 6 NYCRR 360-13.1(b)(unpermitted waste tire storage), a civil penalty of \$5,000; and
2. For violation of ECL 27-1911(1), a civil penalty of \$6,200.

ECL 27-1911(1) prohibits land burial of waste tires. Department staff proved that waste tires were buried at the site. Subdivision 360-13.1(b) of 6 NYCRR prohibits the temporary storage of more than 1,000 waste tires without a permit. Staff proved that between 3,000 and 5,000 waste tires were stored at the site. The record also reflects that the waste tires were stored at the site for more than 18 months and as such would constitute disposal pursuant to 6 NYCRR 360-1.2(b)(164).

Department staff has demonstrated that respondents in both the storage and burial of waste tires have caused the release of solid waste into the environment. The maximum penalty of \$11,250 per violation plus \$11,250 for each day the violation continues allowed by ECL 71-2703(1)(b)(i) should be applied to the violations for the purpose of calculating the maximum statutory penalty. The maximum penalty for each violation for the 125 days of violations would be \$1,406,250 for storing more than 1,000 waste tires without a permit and \$1,406,250 for burial of waste tires for a total maximum penalty on the second cause of action of \$2,812,500.

Staff's requested penalty of \$11,200 (\$5,000 for the unpermitted storage and \$6,200 for burial of waste tires) on the second cause of action is supported by the record.

C. Staff's Third Cause of Action - Unlawful Disposal of Solid Waste

On the third cause of action, staff requests the following penalty:

For the violation of 6 NYCRR 360-1.5(a) (disposal of solid waste, including lead-acid batteries, without a permit), Department staff applied the maximum penalty of \$22,500 allowed by ECL 71-2703(1)(b)(ii) and, using the penalty range guide from OGC-8: Solid Waste Enforcement Policy (November 17, 2010), determined that the potential for harm and the extent of the deviation from the regulatory requirements justified applying a factor of .85 to the maximum penalty of \$22,500 for a civil penalty of \$19,000.

Department staff demonstrated that respondents caused the release of approximately 288 cubic yards of solid waste into the environment (Finding of Fact No. 28). The maximum penalty of \$22,500 allowed by ECL 71-2703(1)(b)(ii) should be applied to the violation. As stated above, for the purpose of calculating the maximum penalty, 125 days of violation are used resulting in a maximum penalty of \$2,812,500. Staff's requested penalty of \$19,000 on the second cause of action is supported by the record.

D. Staff's Fourth Cause of Action - Improper Storage of Used Oil

On the fourth cause of action, staff requests the following penalty:

For violation of 6 NYCRR 374-2.3(c)(2) and (8)(improper storage of used oil), a civil penalty of \$19,000.

As demonstrated by Department staff, respondents stored used oil in a variety of non-compliant containers, drums and tanks scattered about the site.

The applicable penalty provisions for violations of 6 NYCRR 374-2.3 are found in ECL 71-2705(1), which provides for a maximum penalty of \$37,500 per violation and an additional penalty of not more than \$37,500 for each day the violation continues. Applying this penalty to the 125 days the violation continued results in a maximum penalty of \$4,687,500. Staff's requested penalty of \$19,000 on the fourth cause of action is supported by the record.

E. Staff's Fifth Cause of Action - Unlawful Disposal of Lead-Acid Batteries

Department staff did not request a separate penalty on the fifth cause of action as staff incorporated the fifth cause of action into the third cause of action for penalty purposes.

F. Staff's Sixth Cause of Action - Unlawful Disposal of Pollutants Into Unpermitted Floor Drains

On the sixth cause of action, staff requests the following penalty:

For violation of ECL 17-0505 and 6 NYCRR 750-1.4(a) (unlawful discharge of pollutants into unpermitted floor drains), a civil penalty of \$15,000.

The record demonstrates that respondents discharged pollutants into the groundwater through the floor drains in the garage. The soil and groundwater in the vicinity of the floor drains remains contaminated with VOCs and SVOCs. ECL 71-1929(1) provides a maximum penalty of \$37,500 per day for each violation. Applying this penalty to the 125 days the violation continued results in a maximum penalty of \$4,687,500. Staff's requested penalty of \$15,000 is supported by the record.

G. Staff's Seventh Cause of Action - Failure to Make Hazardous Waste Determinations

On the seventh cause of action, staff requests the following penalty:

For the violation of 6 NYCRR 372.2(a)(2) (failure to make hazardous waste determination), a civil penalty of \$3,000.

Staff demonstrated that in order to assure the proper management, treatment and disposal of waste, it is incumbent upon all waste generators to determine whether the waste generated is hazardous. As proven by the EPA manifest and variety of liquid wastes left in containers, drums and tanks exposed to the elements, respondents did not do so in this case. ECL 71-2705(1) provides a maximum penalty of \$37,500 for each violation and an additional maximum penalty of \$37,500 for each day the violation continues. Applying this penalty to the 125 days the violation continued results in a maximum penalty of

\$4,687,500. Department staff's requested penalty of \$3,000 is supported by the record.

H. Staff's Eighth Cause of Action - Unpermitted Hazardous Waste Management Facility

On the eighth cause of action staff, requests the following penalty:

For the violation of 6 NYCRR 373-1.2(a)(operating a hazardous waste management facility without a permit), a civil penalty of \$5,000.

As proven by the EPA manifest, respondents managed more than 3,000 gallons of hazardous waste at the site. ECL 71-2705(1) provides a maximum penalty of \$37,500 for each violation and an additional maximum penalty of \$37,500 for each day the violation continues. Applying this penalty to the 125 days the violation continued results in a maximum penalty of \$4,687,500. Department staff's requested penalty of \$5,000 is supported by the record.

The total maximum penalty in this proceeding exceeds \$200,000,000. The requested penalty of \$122,250 is less than the EPA's estimated \$125,000 removal costs (see Finding of Fact No. 17). Department staff supported its penalty request by providing testimony on the economic benefit that respondents gained by non-compliance and the gravity of the violations (actual harm and potential harm) for each of the causes of action. Though a higher penalty is supported on this record, I am constrained from recommending a higher penalty because this is a default proceeding and respondents would not be on notice of any penalty higher than requested in the pleadings (see Matter of Reliable Heating Oil, Inc., Decision and Order of the Commissioner, Oct. 30, 2013, at 2-3). Therefore, I recommend the Commissioner assess a civil penalty against respondents in the amount of \$122,250, as requested by Department staff.

Department staff also requests that the Commissioner's order reserve staff's rights to bring further proceedings against respondents related to this site. Such requests by staff to reserve all rights have been made, and rejected, in prior orders (see e.g. Matter of Galloway, Order of the Commissioner, January 16, 2015, at 5). Language reserving the Department or the State's rights for matters that have not been alleged in the complaint is unnecessary.

## Recommendation

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

1. Granting Department staff's motion for default judgment with respect to the violations listed in paragraph 2, below.
2. Holding, based upon the proof adduced at the adjudicatory hearing, respondents jointly and severally liable for the following:
  - a. Violation of 6 NYCRR 612.2(a)(1) for failure to register the PBS facility;
  - b. Violation of 6 NYCRR 613.9(b) for failing to close nine PBS tanks;
  - c. Violation of 6 NYCRR 613.3(b)(1) for failing to color code fill ports on six PBS tanks;
  - d. Violation of 6 NYCRR 613.3(c)(3)(i) for no gauges or alarms on six PBS tanks;
  - e. Violation of 6 NYCRR 613.3(c)(3)(ii) for not properly labeling six PBS tanks;
  - f. Violation of 6 NYCRR 613.3(c)(6)(i)(a) for no secondary containment for six PBS tanks;
  - g. Violation of 6 NYCRR 614.9(c) for failure to apply surface coating to six PBS tanks;
  - h. Violation of 6 NYCRR 360-13.1(b) for storing more than 1,000 waste tires without a permit;
  - i. Violation of ECL 27-1911(1) for burying waste tires on site;
  - j. Violation of 6 NYCRR 360-1.5(a) for disposing solid waste, including lead-acid batteries, at the site without a permit;
  - k. Violation of ECL 27-1701(3)(a) for disposing lead-acid batteries at the site;

- l. Violation of 6 NYCRR 374-2.3(c)(2) and (8) for the improper storage of used oil;
  - m. Violation of ECL 17-0505 and 6 NYCRR 750-1.4(a) for the discharge of pollutants through the floor drains into the groundwater without a permit;
  - n. Violation of 6 NYCRR 372.2(a)(2) for failing to make hazardous waste determinations; and
  - o. Violation of 6 NYCRR 373-1.2(a) for operating a hazardous waste management facility without a permit.
3. Directing respondents to pay a civil penalty of one hundred twenty-two thousand two hundred fifty dollars (\$122,250) for the above referenced violations.
  4. Directing such other and further relief as the Commissioner may deem appropriate.

\_\_\_\_\_/s/\_\_\_\_\_  
Michael S. Caruso  
Administrative Law Judge

Dated: Albany, New York  
November 20, 2014

### EXHIBIT CHART – DEFAULT HEARING

*Matter of Bissco Holding, Inc. and Stephen S. Biss*

*September 4, 2014*

Edirol File No. 051004091839

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	Notice of Violation Cover Letter dated October 8, 2013 and Order on Consent.	✓	✓	Department Staff	
2	Phone log notes of Scott Abrahamson regarding conversation with Stephen S. Biss, dated February 6, 2014.	✓	✓	Department Staff	
3	Affidavit of Service of Notice of Hearing and Complaint (Personal Service on Stephen S. Biss) of Environmental Conservation Officer Thomas Wensley sworn to February 21, 2014.	✓	✓	Department Staff	
4	Affidavit of Service of Notice of Hearing and Complaint (Personal Service on Corporation pursuant to Business Corporation Law 306) of Drew Wellette, sworn to February 18, 2014.	✓	✓	Department Staff	
5	Affidavit of Additional Service of Notice of Hearing and Complaint on Corporation [CPLR 3215(g)(4)] of Betty Douglas, sworn to February 12, 2014.	✓	✓	Department Staff	



Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
6	Affidavits of Service of Notice of Default Hearing [Pursuant to CPLR 308(4) ] of Environmental Conservation Officer Thomas Wensley, sworn to August 21, 2014 and Betty Douglas, sworn to August 21, 2014.	✓	✓	Department Staff	
7	Affidavit of Additional Service of Notice of Default Hearing on Corporation [CPLR 3215(g)(4)] of Linda Branch sworn to August 7, 2014.	✓	✓	Department Staff	
8	Affidavit of Service of Notice of Default Hearing (Certified Mail Service on Stephen S. Biss) of Linda Branch sworn to August 7, 2014 with signed receipt dated August 12, 2014.	✓	✓	Department Staff	
9	Affidavit of Service of Notice of Default Hearing (First Class Mail Service on Stephen S. Biss) of Linda Branch sworn to August 7, 2014.	✓	✓	Department Staff	
10	Affidavit of Service of Notice of Default Hearing (Personal Service on Corporation pursuant to Business Corporation Law 306) of Drew Wellette, sworn to August 8, 2014.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
11	Affidavit of Additional Service of Notice of Default Hearing on Corporation [CPLR 3215(g)(4)] of Linda Branch sworn to August 7, 2014 with envelope returned and marked "Not Deliverable As Addressed Unable To Forward."	✓	✓	Department Staff	Relates to service referenced in Exhibit No. 7
12	A. NYS Department of State Entity Information, dated June 11, 2013; and B. NYS Department of State Entity Information, dated September 17, 2014.	✓	✓	Department Staff	
13	Certificate of Incorporation of BissCo Holding, Inc. filed with NYS Department of State on November 29, 1999 and filed with the Saratoga County Clerk's Office on January 28, 2000.	✓	✓	Department Staff	
14	Deed to BISSCO HOLDING, INC. dated January 1, 2000 and recorded in the Saratoga County Clerk's Office on April 19, 2001 at Book 1577 Page 726.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
15	<p>A. Saratoga County Office of Real Property Services, Image Mate Online, Ownership Information, for 4724 Route 50, Town of Northumberland, Saratoga County, dated June 27, 2013; and</p> <p>B. Saratoga County Office of Real Property Services, Image Mate Online, Ownership Information, for 4724 Route 50, Town of Northumberland, Saratoga County, dated September 17, 2014.</p>	✓	✓	Department Staff	
16	Photograph of the site dated May 24, 2012.	✓	✓	Department Staff	
17	Photographs (2) of interior of garage, floor drains, lift, and PVC monitoring well at the site, undated.	✓	✓	Department Staff	
18	Photograph of interior floor drain at the site, dated May 24, 2012.	✓	✓	Department Staff	
19	Photograph of interior floor drain at the site, dated October 2, 2012.	✓	✓	Department Staff	
20	Photograph of interior containers at the site, dated May 24, 2012.	✓	✓	Department Staff	
21	“Phase II Environmental Assessment, Scott’s Auto Sales, 4724 Route 50, Town of Northumberland, Saratoga County, New York, NYSDEC Spill No. 1109982” dated December 1, 2011.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
22	Photograph of EPA personnel mobilized at the site dated October 2, 2012.	✓	✓	Department Staff	
23	Photograph of EPA personnel testing container at the site dated October 2, 2012.	✓	✓	Department Staff	
24	Photograph of EPA personnel testing containers at the site dated October 2, 2012.	✓	✓	Department Staff	
25	Photographs (4) of the site post-EPA removal action, undated.	✓	✓	Department Staff	
26	Photographs (4) of the site post-EPA removal action, undated.	✓	✓	Department Staff	
26A	NYSDEC SPILL REPORT FORM (1998 spill) printed September 4, 2014.	✓	✓	Department Staff	
27	Photograph of Waste Tire Pile #1 at the site, dated May 24, 2012.	✓	✓	Department Staff	
28	Photographs (2) of Waste Tire Pile #2 and #3 at the site, undated.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
29	Photograph of buried tires adjacent to stream at the site, dated May 24, 2012.	✓	✓	Department Staff	
30	Photograph of containers outside, located behind the garage at the site, dated May 24, 2012.	✓	✓	Department Staff	
31	Photograph of drums, one marked "oil" at the site, dated May 24, 2012.	✓	✓	Department Staff	
32	Photograph of drums and containers, located near front of the garage at the site, dated May 24, 2012.	✓	✓	Department Staff	
33	Photograph of bulging drums with waste tire pile #1 at the site, dated May 24, 2012.	✓	✓	Department Staff	
34	Photograph of drums stored in shed at the site, dated May 24, 2012.	✓	✓	Department Staff	
35	OGC #8: Solid Waste Enforcement Policy (November 17, 2010).	✓	✓	Department Staff	
36	USEPA Reg. II/Scott's Auto Sales Uniform Hazardous Waste Manifest, dated December 5, 2013.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
37	Photograph of 275 gallon PBS tanks and drums at the site, dated May 24, 2012.	✓	✓	Department Staff	
37A	Penalty Schedule for PBS violations prepared by Steve Paszko, undated.	✓	✓	Department Staff	
38	Memorandum re: Program Guidance for Floor Drains in Vehicle Service, Washing and Storage Bays, dated September 30, 1992.	✓	✓	Department Staff	
39	Northumberland Town Court Trial Waiver and Plea Agreement Dated August 5, 2014 and Certificate of Disposition dated October 14, 2014.	✓	✓	Department Staff	
40	Department staff's Supplement to Default Proceeding dated September 17, 2014.	✓	✓	Department Staff	
41	Affidavit of Service of Betty Douglas, sworn to September 18, 2014.	✓	✓	Department Staff	
42	Transmittal letter from Assistant Regional Attorney Scott Abrahamson to ALJ Caruso dated November 12, 2014.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
43	Affidavit of Service of Notice of Default Hearing with Notice of Hearing and Complaint, proposed order, and correspondence from ALJ Caruso by first class mail on respondents Biss and Bisco, of Betty Douglas sworn to October 17, 2014 and cover letters from attorney Abrahamson to respondents.	✓	✓	Department Staff	