

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER

DEC Case No.
R4-2013-0409-53

- by -

**MARIAM PETROLEUM, INC. and NAEEM
MAHMOOD,**

Respondents.

This administrative enforcement proceeding concerns alleged violations of ECL article 17 and 6 NYCRR parts 612, 613, and 614 at a petroleum bulk storage (PBS) facility that respondent Mariam Petroleum, Inc. owns and respondent Naeem Mahmood operates at 585 Broadway, Schenectady, New York. Present at the facility are three underground PBS tanks with capacities of 10,000 (tank number 1), 6,000 (tank number 2A), and 3,000 (tank number 2B) gallons. In addition, the facility has three aboveground PBS tanks with capacities of 1,000 (tank number 4), 275 (tank number 7C), and 275 (tank Number 8D) gallons. The facility, designated as PBS # 4-143200) is located above the Schenectady-Niskayuna Aquifer System (see Affidavit of David Pickett, November 2, 2015, ¶ 13.d.).

In accordance with 6 NYCRR 622.3(a)(3), staff of the New York State Department of Environmental Conservation (Department) commenced this proceeding by service of a notice of hearing and complaint dated August 9, 2013. Staff received an answer dated September 10, 2013. In August 2015, staff moved to amend its notice of hearing and complaint. Staff's motion was unopposed, and was granted by Chief Administrative Law Judge James T. McClymonds (see Matter of Mariam Petroleum Inc., Ruling on Motion to Amend the Complaint, September 25, 2015 at 4).

On September 28, 2015, Department staff served the amended notice of hearing and amended complaint on respondents Mariam Petroleum, Inc. and Naeem Mahmood by certified mail, return receipt requested. Respondents received and signed for their respective certified mailings on October 1, 2015. Neither respondent filed an answer to the amended complaint.

By cover letter dated November 2, 2015, Department staff filed and served a motion for default judgment pursuant to 6 NYCRR 622.15. The matter was assigned to Administrative Law Judge Michael S. Caruso, who prepared the attached default summary report. I adopt the default summary report as my decision in this matter, subject to the following comments.

Department staff have identified numerous violations of the PBS regulations at this facility. I agree with the ALJ that Department staff met their burden of establishing the alleged violations. The record demonstrates that respondent owner Mariam Petroleum, Inc. has violated:

- 6 NYCRR 612.2(a)(2), for failing to renew the PBS facility registration; and
- 6 NYCRR 614.7(d), for failing to maintain an accurate drawing or as-built plans showing the size and location of any new underground tank and piping system, together with a statement by the installer that the system was installed in compliance with the New York State Standards for New and Substantially Modified Petroleum Bulk Storage Facilities.

The record also demonstrates that respondent owner Mariam Petroleum, Inc. and respondent operator Naeem Mahmood have, jointly and severally, violated the following:

- 6 NYCRR 613.3(b), for failing to properly mark the fill ports on aboveground PBS tanks 4, 7C, and 8D;
- 6 NYCRR 613.5(b)(3), for failing to monitor for traces of petroleum at least once per week for underground PBS tanks 1, 2A, and 2B;
- 6 NYCRR 613.5(b)(3), for failing to conduct monthly inspections of the monitoring systems for underground PBS tanks 1, 2A, and 2B;

- 6 NYCRR 613.5(b)(4), for failing to maintain records of monthly cathodic protection and leak detection system inspections for the piping associated with underground PBS tanks 1, 2A, and 2B;
- 6 NYCRR 613.6(a), for failing to conduct monthly inspections of aboveground tanks 4, 7C, and 8D;
- 6 NYCRR 613.6(c), for failing to maintain and make available upon request reports for each monthly inspection and maintain the reports for at least ten years;
- 6 NYCRR 613.3(d), for failing to adequately maintain spill prevention equipment; and
- 6 NYCRR 613.8, for failing to report petroleum spills at the facility to the Department within two hours of discovery.

Department staff has requested a civil penalty in the amount of ten thousand dollars (\$10,000). The ALJ concludes that a total penalty of ten thousand dollars (\$10,000) is supported and authorized, that eight thousand dollars (\$8,000) of the penalty may be assessed jointly and severally upon respondents, and that two thousand dollars of the penalty may only be imposed on respondent owner Mariam Petroleum, Inc. (see Default Summary Report at 9, 12). I hereby impose a civil penalty in the amount of ten thousand dollars, as requested by Department staff and recommended by the ALJ.¹

Department staff has requested that respondents undertake specified corrective actions at the facility that are authorized and warranted on this record.² I hereby direct that within thirty (30) days of the service of this order upon respondents, respondents Mariam Petroleum, Inc. and Naeem Mahmood submit

¹ECL provides that any person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars (\$37,500) per day for each violation.

²Parts 612, 613, and 614 of 6 NYCRR were repealed and replaced with a new part 613 in October 2015. As ALJ Caruso noted, former parts 612, 613, and 614 apply to the violations cited in this proceeding (see Default Summary Report, at 2 n2), but, as to the corrective actions, current part 613 of 6 NYCRR applies.

photographs and documentation to Department staff demonstrating that:

- the fill ports at the facility have been color coded;
- the interstitial space alarm for PBS tank 1 has been investigated and resolved (including the cause of the alarm);
- the high level alarm has been repaired and is functioning properly;
- monthly visual inspections are being conducted and records of those inspections are being maintained; and
- the operability of the electronic leak detection system is being monitored monthly.

As noted, respondent owner Mariam Petroleum, Inc. had failed to renew the facility's PBS registration. It also had failed to maintain an accurate drawing or as-built plans for the facility that satisfy regulatory standards.

With respect to the facility registration, by letter dated May 12, 2016, Department counsel advised ALJ Caruso that respondent Mariam Petroleum, Inc. on April 14, 2016 submitted a completed registration form and a check for the facility registration fee. Although this late submission of the form and fee does not affect the finding of a violation of 6 NYCRR 612.2(a)(2), it does negate the need for corrective action in this regard.

With respect to the drawing or as-built plans, Mariam Petroleum, Inc. has not furnished that documentation. I am hereby directing that, within thirty (30) days of the service of this order upon respondent Mariam Petroleum, Inc., respondent shall submit to Department staff an accurate drawing or as-built plans for the facility that satisfy regulatory standards.

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

- I. Department staff's motion for default judgment, pursuant to 6 NYCRR 622.15, is granted.

- II. Based on the record evidence, respondent Mariam Petroleum, Inc. is adjudged to have violated the following:
- A. 6 NYCRR 612.2(a)(2), for failing to renew the PBS facility registration (first cause of action); and
 - B. 6 NYCRR 614.7(d), for failing to maintain an accurate drawing or as-built plans showing the size and location of any new underground tank and piping system, together with a statement by the installer that the system was installed in compliance with the New York State Standards for New and Substantially Modified Petroleum Bulk Storage Facilities (eighth cause of action).
- III. Based on the record evidence, respondents Mariam Petroleum, Inc. and Naeem Mahmood are adjudged to have violated the following:
- A. 6 NYCRR 613.3(b), for failing to properly mark the fill ports on aboveground PBS tanks 4, 7C, and 8D (second cause of action);
 - B. 6 NYCRR 613.5(b)(3), for failing to monitor for traces of petroleum at least once per week for underground PBS tanks 1, 2A, and 2B (third cause of action);
 - C. 6 NYCRR 613.5(b)(3), for failing to conduct monthly inspections of the monitoring systems for underground PBS tanks 1, 2A, and 2B (fourth cause of action);
 - D. 6 NYCRR 613.5(b)(4), for failing to maintain records of monthly cathodic protection and leak detection system inspections for the piping associated with underground PBS tanks 1, 2A, and 2B (fifth cause of action);
 - E. 6 NYCRR 613.6(a), for failing to conduct monthly inspections of aboveground tanks 4, 7C, and 8D (sixth cause of action);
 - F. 6 NYCRR 613.6(c), for failing to maintain and make available upon request reports for each monthly

inspection and maintain the reports for at least ten years (seventh cause of action);

- G. 6 NYCRR 613.3(d), for failing to adequately maintain spill prevention equipment (ninth cause of action); and
- H. 6 NYCRR 613.8, for failing to report petroleum spills at the facility to the Department within two hours of discovery (tenth cause of action).

IV. With respect to a civil penalty:

- A. respondent Mariam Petroleum, Inc. is assessed a civil penalty in the amount of two thousand dollars (\$2,000) for the violations referenced in paragraph "II" of this order. Within thirty (30) days of service of this order upon respondent Mariam Petroleum, Inc., respondent Mariam Petroleum, Inc. shall pay the civil penalty of two thousand dollars (\$2,000) by certified check, cashier's check, or money order made payable to the "New York State Department of Environmental Conservation."
- B. respondents Mariam Petroleum, Inc. and Naeem Mahmood are jointly and severally assessed a civil penalty in the amount of eight thousand dollars (\$8,000) for the violations referenced in paragraph "III" of this order. Within thirty (30) days of service of this order upon respondents Mariam Petroleum, Inc. and Naeem Mahmood, respondents shall pay the civil penalty of eight thousand dollars (\$8,000) by certified check, cashier's check, or money order made payable to the "New York State Department of Environmental Conservation."
- C. the penalty payments required in "A" and "B" of this paragraph shall be mailed or hand-delivered to the Department at the following address:

NYSDEC Region 4
1130 North Westcott Road
Schenectady, New York 12306
Attention: Dusty Renee Tinsley, Esq.

- V. Within thirty (30) days of service of this order on respondents Mariam Petroleum, Inc. and Naeem Mahmood:

- A. respondents Mariam Petroleum, Inc. and Naeem Mahmood shall submit photographs and documentation demonstrating that:
1. the fill ports at the facility have been color coded;
 2. the interstitial space alarm for PBS tank 1 has been investigated and resolved (including the cause of the alarm);
 3. the high level alarm has been repaired and is functioning properly;
 4. monthly visual inspections are being conducted and records of those inspections are being maintained; and
 5. the operability of the electronic leak detection system is being monitored monthly.
- B. respondent Mariam Petroleum Inc. shall submit an accurate drawing or as-built plans for the facility that satisfy regulatory standards.
- C. all photographs and documentation referenced in this paragraph "V" shall be submitted to the following address:

NYSDEC Region 4
1130 North Westcott Road
Schenectady, New York 12306
Attention: Dusty Renee Tinsley, Esq.

VI. The provisions, terms, and conditions of this order shall bind respondents Mariam Petroleum, Inc. and Naeem Mahmood, 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: October 13, 2016
Albany, New York

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

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

**DEFAULT
SUMMARY REPORT**

DEC File No.
R4-2013-0409-53

- by -

MARIAM PETROLEUM INC. and NAEEM MAHMOOD,

Respondents.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General
Counsel (Dusty Renee Tinsley of counsel), for staff of the
Department of Environmental Conservation
- No appearance for respondents

PROCEEDINGS

Staff of the Department of Environmental Conservation
(Department) commenced this administrative enforcement
proceeding by service of an August 9, 2013, notice of hearing
and complaint upon then respondents Mariam Petroleum Inc,¹ Tariq
Mahmood, and Naeem Mahmood alleging various violations of the
petroleum bulk storage (PBS) facility regulations at
respondents' PBS facility located at 585 Broadway, Schenectady,
New York.

One of the respondents filed an answer dated September 10,
2013 with the Department, but Department staff and the Office of
Hearings and Mediation Services could not determine which
respondent had signed the answer.

¹ The corporate name as filed with the Department of State.

In a letter dated August 25, 2015, Department staff moved to amend its complaint to (1) add additional charges for violations arising from an inspection conducted in January 2012, and (2) remove Tariq Mahmood as a respondent. Staff also sought to amend the notice of hearing. The motion and amended pleadings were served on the respondents, but none of the respondents responded to staff's motion.

By ruling dated September 25, 2015, Chief Administrative Law Judge James T. McClymonds granted staff's motion and directed staff to serve the remaining respondents, Mariam Petroleum Inc and Naeem Mahmood, the amended notice of hearing and amended complaint pursuant to 6 NYCRR 622.3(a)(3) (see Matter of Mariam Petroleum Inc, Tariq Mahmood, and Naeem Mahmood, Ruling of the Chief Administrative Law Judge, September 25, 2015 at 4). On September 28, 2015, Department staff served the amended notice of hearing and amended complaint on respondents Mariam Petroleum Inc and Naeem Mahmood (respondents) by certified mail return receipt requested. Respondents received their respective certified mailings on October 1, 2015. The amended notice of hearing instructed respondents that a written answer must be filed within twenty days of respondents' receipt of the complaint.

The September 28, 2015 amended complaint asserts that respondent Mariam Petroleum Inc owns a petroleum bulk storage (PBS) facility at 585 Broadway, Schenectady, New York (Schenectady County) and that respondent Naeem Mahmood operates the facility. The facility is engaged in retail gasoline sales (see Amended Complaint, Attachment 2 - PBS Facility Information Report). The PBS facility consists of three underground PBS tanks (Tank 1 - 10,000 gallons [gasoline], Tank 2A - 6,000 gallons [diesel] and Tank 2B - 3,000 gallons [gasoline]) and three aboveground PBS tanks (Tank 4 - 1,000 gallons [Kerosene], Tank 7C - 275 gallons [#2 Fuel Oil] and Tank 8D - 275 gallons [#2 Fuel Oil]).

In ten causes of action, the September 28, 2015 amended complaint alleges that respondents violated various provisions of 6 NYCRR parts 612 (Registration of Petroleum Storage Facilities), 613 (Handling and Storage of Petroleum) and 614 (Standards for New and Substantially Modified Petroleum Storage Facilities).²

² Parts 612, 613 and 614 were repealed, effective subsequent to the commencement of this proceeding, and replaced by a revised part 613. For the purposes of the violations alleged in this matter, the prior parts 612, 613 and 614 apply.

For these alleged violations, Department staff requests a total civil penalty of \$10,000 and an order from the Commissioner directing respondents to submit a PBS renewal application with a copy of the deed to the property, provide photographs and documentation to demonstrate respondents have cured the alleged violations and submit an as-built drawing of the facility.

Motion for Default Judgment

By cover letter dated November 2, 2015, Department staff filed and served a motion for default judgment pursuant to 6 NYCRR 622.15. This matter was assigned to me on November 5, 2015. In addition to the November 2, 2015 transmittal letter, staff's motion papers consist of the following:

1. Motion for Default Judgment and Order, dated November 2, 2015;
2. Affirmation of Dusty Renee Tinsley (Tinsley Affirmation), dated November 2, 2015 with the following attachments:

Attachment 1 - Affidavit of Service By Certified Mail Return Receipt of Jill Viscusi, sworn to November 2, 2015 with the following attached:

Attachment A - copies of two signed USPS Return Receipt cards;

Attachment B - copies of the United State Postal Service (USPS) Certified Mail Receipt on respondents; and

Attachment C - copy of the September 28, 2015 letter from Ms. Tinsley to respondents serving the amended notice of hearing and amended complaint, with USPS tracking numbers noted.

Attachment 2 - Amended Notice of Hearing and Amended Complaint dated September 28, 2015 with the following attached:

Attachment 1 - New York State Department of State Entity Information, current through June 29, 2015;

- Attachment 2 - PBS Facility Information Report, printed April 4, 2013;
- Attachment 3 - PBS Certificate No. 4-143200 issued August 9, 2007 with an expiration date of August 9, 2012, printed August 20, 2015; and
- Attachment 4 - Notice of Violation dated February 3, 2012.

Attachment 3 - a proposed order.

3. Affidavit of David Pickett (Pickett Affidavit), sworn to November 2, 2015 with the following attachments:

- Attachment 1 - New York State Department of State Entity Information, current through October 20, 2015;
- Attachment 2 - PBS Certificate No. 4-143200 issued August 9, 2007 with an expiration date of August 9, 2012, printed April 4, 2013;
- Attachment 3 - PBS Facility Information Report, printed August 9, 2013;
- Attachment 4 - Notice of Violation dated February 3, 2012;
- Attachment 5 - DEE-1: Civil Penalty Policy, June 20, 1990;
- Attachment 6 - Federal Register Notice, Vol. 50, No. 9, Page 2022 dated January 14, 1984 (Schenectady-Niskayauna Aquifer System);
- Attachment 7 - DEE-22: Petroleum Bulk Storage Inspection Enforcement Policy - Penalty Schedule; and
- Attachment 8 - Answer from unidentified respondent dated September 10, 2013.

4. USPS Tracking Information for service of the amended notice of hearing and amended complaint.

5. Affidavit of Service of Jill Viscusi, sworn to November 19, 2015 (verifying service of the motion for default judgment on respondents on November 2, 2015 and service of the USPS Tracking Information on November 16, 2015.

DISCUSSION

The respondents' failure to timely file an answer constitutes a default and a waiver of respondents' right to a hearing (6 NYCRR 622.15[a]). Department staff's motion for a default judgment must include proof of service of the amended notice of hearing and amended 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 at 2).

In PBS enforcement proceedings, Department staff is directed "to include, with staff's complaint or motion for order without hearing (in lieu of complaint), at a minimum the following documents: [i] a copy of the facility's PBS registration (if one has been issued); [ii] the PBS facility information report, if any; and [iii] any notice of violation that is a basis for Department staff's allegations in the charging instrument." (See Matter of Farmer, Order of the Commissioner, October 22, 2009, at 3.) Moreover, on all default judgment motions, Department staff must provide proof of the facts sufficient to support the claim. (See Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, Dec. 12, 2013, at 2-3.)

In the instant proceeding, Department staff has satisfied the requirements of 6 NYCRR 622.15(b) by providing proof of service of the amended notice of hearing and amended complaint (see Tinsley Affirmation, Attachment 1 and USPS Tracking Information), proof of respondents' failure to timely answer the amended complaint (see Tinsley Affirmation, ¶ 8) and a proposed order (see Tinsley Affirmation, Attachment 3). The respondents received the amended notice of hearing and amended complaint on October 1, 2015. Respondents' answer was due October 21, 2015. Ms. Tinsley's November 2, 2015 affirmation states that respondents have not filed an answer. In addition, Department staff served a copy of the motion for default judgment on respondents (see Affidavit of Service of Jill Viscusi, sworn to November 19, 2015) consistent with the Commissioner's directive in Dudley, supra.

To date, the Office of Hearings and Mediation Services has not received a reply from respondents regarding Department staff's motion. Accordingly, staff's motion is unopposed.

Consistent with Matter of Farmer, supra, Department staff attached a copy of the facility's PBS certificate, the PBS facility information report and the February 3, 2012 Notice of Violation to staff's amended complaint (see Tinsley Affirmation, Attachment 2 [Attachments 2, 3 and 4]). Here, the PBS certificate printed on August 20, 2015 demonstrates that the certificate expired on August 9, 2012 and has not been renewed. The PBS certificate also identifies the owner and operator of the facility as does the April 4, 2013 PBS facility information report.

Department staff alleged that respondent Mariam Petroleum Inc is the owner of the facility (see Tinsley Affirmation, Attachment 2 - Amended Complaint at ¶ 3). The Facility Information Report and PBS Certificate, attached to the amended complaint and the Pickett Affidavit, list Mariam Petroleum Inc as the owner. The amended complaint, Facility Information Report and PBS Certificate also list Naeem Mahmood as the operator of the facility (id. at ¶ 8).

Staff, however, points out in its papers that Mariam Petroleum Inc is an inactive corporation. The Department of State Entity Information sheet, attached to the amended complaint and the Pickett Affidavit, demonstrates that the corporation was dissolved by proclamation on April 25, 2012 and that its authority to do business in New York was annulled. Department staff does not address how this affects the analysis of the corporation's liability.

It has been previously held that a corporation that has been dissolved by proclamation due the corporation's failure to file biennial statements or franchise tax returns, continues its corporate existence for purpose of winding up the corporate affairs including paying liabilities or obligations, for being sued and participating in administrative proceedings in its corporate name, even if the activities giving rise to liability occurred after corporate dissolution (see Matter of AMI Auto Sales Corp., Manuel R. Inoa, and Ramon B. Reyes, Decision and Order of the Commissioner, February 16, 2012 at 5). In this matter, the violations giving rise to liability occurred before and after dissolution. It is unclear on this record if the corporation is still in the process of winding up its affairs or is simply continuing business without regard to the fact that its authority to conduct business in New York has been annulled.

Nonetheless, a corporation may be held liable for violations that occur or accrue after its dissolution if the

corporation continued its operations, operated its premises and held itself out as a de facto corporation, notwithstanding its being dissolved by proclamation. (See Bruce Supply Corp. v New Wave Mechanical, Inc., 4 AD3d 444 [2nd Dept 2004]; see also D & W Central Station Alarm Co., Inc. v Copymasters, Inc., 122 Misc2d 453 [Civ Ct, Queens County 1983] [holding that a corporation that continued its operations, operated its premises and held itself out as a corporation, notwithstanding its alleged dissolution, is estopped from pleading dissolution and avoiding its obligations].) Here, at the time of the January 17, 2012 and May 2, 2013 inspections, respondent Mariam Petroleum Inc continued operation of the gas station and was still listed as the owner and operator of the facility.³

Department staff provided the Pickett Affidavit in support of each of the violations alleged by staff. The Pickett Affidavit is supported by a copy of the February 3, 2012 Notice of Violation regarding the violations witnessed by staff during the January 17, 2012 inspection. The Pickett Affidavit also specifically identifies which violations Mr. Pickett witnessed during his January 17, 2012 and his May 2, 2013 inspections of respondents' facility.⁴ Staff's motion papers do not include an inspection report or notice of violation associated with the 2013 inspection.

I conclude that Department staff has, consistent with Matter of Queen City Recycle Center, supra, provided proof of the facts sufficient to support staff's claims against respondents.

Accordingly, I conclude that Department staff has met its burden in showing that:

³ Staff provides some evidence that the corporation is the owner of the facility. In the future, in situations where a business entity has been dissolved by proclamation and the dissolved entity owns real property, staff should provide a copy of the deed to the real property as it has been held that a corporation's ownership of real property, after its dissolution, is indicia of the corporation continuing to conduct business in New York (see Laurendi v Cascade Dev. Co. Inc., 5 Misc2d 688, 689 [Niagara County Ct 1957]).

⁴ Mr. Pickett states that he is familiar with the amended notice of hearing and complaint because the pleadings are based on his January 22, 2014 inspection of respondents' facility (see Pickett Affidavit at ¶ 11). The amended complaint does not claim violations occurred in 2014 nor is there any other mention of a 2014 inspection.

1. Respondent Mariam Petroleum Inc has not renewed the registration of the PBS facility;
2. Respondents failed to properly color code the fill ports on aboveground PBS tanks 4, 7C and 8D;
3. Respondents failed to monitor underground PBS tanks 1, 2A and 2B for traces of petroleum at least once per week;
4. Respondents failed to conduct monthly inspections of the monitoring systems for underground PBS tanks 1, 2A and 2B;
5. Respondents failed to maintain records of monthly cathodic protection and leak detection system inspections for the piping associated with underground PBS tanks 1, 2A and 2B;
6. Respondents failed to conduct monthly inspections of aboveground tanks 4, 7C and 8D;
7. Respondents failed to maintain, and make available upon request, reports for each monthly inspection of aboveground tanks 4, 7C and 8D and failed to maintain the reports for at least ten years;
8. Respondent Mariam Petroleum Inc failed to maintain an accurate drawing or as-built plans showing the size and location of any new underground tank and piping system, together with a statement by the installer that the system was installed in compliance with the New York State Standards for New and Substantially Modified Petroleum Bulk Storage Facilities;
9. Respondents failed to adequately maintain spill prevention equipment; and
10. Respondents failed to report petroleum spills at the facility to the Department within two hours of discovery.

I conclude that respondent Mariam Petroleum Inc is liable for violating 6 NYCRR 612.2(a)(2) and 614.7(d) and respondents Mariam Petroleum Inc and Naeem Mahmood are liable for violating 6 NYCRR 613.3(b) and (d), 613.5(b)(3) and (4), 613.6(a) and (c), and 613.8.

Penalties

Department staff requests that the respondents be assessed a civil penalty of \$10,000. Staff cites the provisions of ECL 71-1929 that set forth a maximum daily civil penalty of \$37,500 for violations of article 17 or the regulations promulgated pursuant thereto. Staff applied the Department's Civil Penalty Policy (DEE-1, June 20, 1990) in determining the appropriate

penalty. Staff lists the following aggravating factors in support of the penalty requested: (1) the importance of PBS registration, monitoring and record keeping to staff's compliance monitoring of PBS facilities; (2) the seriousness of the violations; (3) respondents' failure to address the violations occurring in 2012 and 2013; (4) respondents' continuing failure to bring the facility into compliance; and (5) respondents' facility is located above the Schenectady-Niskayuna Aquifer System. Staff also references the penalty ranges for each violation set forth in DEE-22: Petroleum Bulk Storage Inspection Enforcement Policy - Penalty Schedule (May 21, 2003) and applies those penalty amounts to the violations noted in the amended complaint.

Using those parameters, Department staff arrived at a total penalty of \$12,300 but reduced the penalty to \$10,000 based on respondents' attempts to address some of the violations as exhibited in the September 10, 2013 answer (see Pickett Affidavit ¶ 14).

I note that applying the daily maximum penalty of \$37,500 per day to a single violation continuing from the January 17, 2012 inspection to the May 2, 2013 inspection, a total of 471 days, would result in a maximum penalty of \$17,662,500. Here staff has proven ten violations that would bring the maximum penalty to \$176,625,000. I conclude that a total penalty of \$10,000 is supported and authorized.

Department staff also requests that the Commissioner hold the respondents jointly and severally liable for the payment of the civil penalty. Staff provides no grounds for doing so. With regard to the regulatory requirements, the owner alone is responsible for registering the facility (see 6 NYCRR 612.2) and providing as-built drawings (see 6 NYCRR 614.7[d]). The requirements of 6 NYCRR 613.3(b) and (d), 613.5(b)(3) and (4), and 613.6(a) and (c) are the obligation of the owner or operator, while the requirement to report a spill, 6 NYCRR 613.8, is the obligation of any person.

I conclude that joint and several liability can be applied to all of the violations except those involving the registration and the as-built drawings. Department staff assigned a \$1,000 penalty to each of those two violations.

CONCLUSIONS OF LAW

1. By failing to renew the PBS facility registration (from August 9, 2012 to date), respondent Mariam Petroleum Inc violated 6 NYCRR 612.2(a)(2) (First cause of action).
2. By failing to properly color code the fill ports on aboveground PBS tanks 4, 7C and 8D, respondents violated 6 NYCRR 613.3(b) (Second cause of action).
3. By failing to monitor underground PBS tanks 1, 2A and 2B for traces of petroleum at least once per week, respondents violated 6 NYCRR 613.5(b)(3) (Third cause of action).
4. By failing to conduct monthly inspections of the monitoring systems for underground PBS tanks 1, 2A and 2B, respondents violated 6 NYCRR 613.5(b)(3) (Fourth cause of action).
5. By failing to maintain records of monthly cathodic protection and leak detection system inspections for the piping associated with underground PBS tanks 1, 2A and 2B, respondents violated 6 NYCRR 613.5(b)(4) (Fifth cause of action).
6. By failing to conduct monthly inspections of aboveground tanks 4, 7C and 8D, respondents violated 6 NYCRR 613.6(a) (Sixth cause of action).
7. By failing to maintain and make available upon request reports for each monthly inspection of aboveground PBS tanks 4, 7C and 8D and maintain the reports for at least ten years, respondents violated 6 NYCRR 613.6(c) (Seventh cause of action).
8. By failing to maintain an accurate drawing or as-built plans showing the size and location of any new underground tank and piping system, together with a statement by the installer that the system was installed in compliance with the New York State Standards for New and Substantially Modified Petroleum Bulk Storage Facilities, respondent Mariam Petroleum Inc violated 6 NYCRR 614.7(d) (Eighth cause of action).
9. By failing to adequately maintain spill prevention equipment, respondents violated 6 NYCRR 613.3(d) (Ninth cause of action).
10. By failing to report petroleum spills at the facility to the Department with two hours of discovery, respondents violated 6 NYCRR 613.8 (Tenth cause of action).

RECOMMENDATIONS

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

1. granting Department staff's motion for default judgment pursuant to 6 NYCRR 622.15;
2. holding that respondent Marian Petroleum Inc violated the following:
 - a. 6 NYCRR 612.2(a)(2) for failing to renew the PBS facility registration (First cause of action); and
 - b. 6 NYCRR 614.7(d) for failing to maintain an accurate drawing or as-built plans showing the size and location of any new underground tank and piping system, together with a statement by the installer that the system was installed in compliance with the New York State Standards for New and Substantially Modified Petroleum Bulk Storage Facilities (Eighth cause of action);
3. holding that respondents Mariam Petroleum Inc and Naeem Mahmood violated the following:
 - a. 6 NYCRR 613.3(b) for failing to properly mark the fill ports on aboveground PBS tanks 4, 7C and 8D (Second cause of action);
 - b. 6 NYCRR 613.5(b)(3) for failing to monitor for traces of petroleum at least once per week for underground PBS tanks 1, 2A and 2B (Third cause of action);
 - c. 6 NYCRR 613.5(b)(3) for failing to conduct monthly inspections of the monitoring systems for underground PBS tanks 1, 2A and 2B (Fourth cause of action);
 - d. 6 NYCRR 613.5(b)(4) for failing to maintain records of monthly cathodic protection and leak detection system inspections for the piping associated with underground PBS tanks 1, 2A and 2B (Fifth cause of action);
 - e. 6 NYCRR 613.6(a) for failing to conduct monthly inspections of aboveground tanks 4, 7C and 8D (Sixth cause of action);
 - f. 6 NYCRR 613.6(c) for failing to maintain and make available upon request reports for each monthly inspection and maintain the reports for at least ten years (Seventh cause of action);
 - g. 6 NYCRR 613.3(d) for failing to adequately maintain spill prevention equipment (Ninth cause of action); and

- h. 6 NYCRR 613.8 for failing to report petroleum spills at the facility to the Department with two hours of discovery (Tenth cause of action);
4. holding that respondents are jointly and severally liable for the violations noted in paragraph 3 (a - h);
5. directing respondent Mariam Petroleum Inc to pay a civil penalty of two thousand dollars (\$2,000) for the violations referenced in paragraph 2 (a - b) within thirty (30) days of service of the Commissioner's order on respondents;
6. directing respondents Mariam Petroleum Inc and Naeem Mahmood to pay a civil penalty of eight thousand dollars (\$8,000) for the violations referenced in paragraph 3 (a - h) within thirty (30) days of service of the Commissioner's order on respondents;
7. holding respondents Mariam Petroleum Inc and Naeem Mahmood jointly and severally liable for the payment of the civil penalty of eight thousand dollars (\$8,000) referenced in paragraph 6;
8. directing respondent Mariam Petroleum Inc to submit a complete registration renewal application to the Department for the facility indicating the proper owner of the facility along with a copy of the deed within ten (10) days of service of the Commissioner's order on respondent together with the applicable registration fees;
9. directing respondents Mariam Petroleum Inc and Naeem Mahmood to submit photographs and documentation, within thirty (30) days of service of the Commissioner's order on respondents, to certify that:
 - A. the fill ports have been color coded;
 - B. the interstitial space alarm for PBS tank 1 has been investigated and resolved (including the cause of the alarm);
 - C. the high level alarm has been repaired and is functioning properly;
 - D. monthly visual inspections are being conducted and records of those inspections are being maintained; and
 - E. the operability of the electronic leak detection system is being monitored monthly;

10. directing respondent Mariam Petroleum Inc to submit an as-built drawing for the facility within thirty (30) days of service of the Commissioner's order on respondents;
11. directing respondents to submit the penalty payment and all other submissions to the following:

Dusty Renee Tinsley, Esq.
Assistant Regional Attorney
NYSDEC Region 4
1130 North Westcott Road
Schenectady, New York 12306; and
12. directing such other and further relief as the Commissioner may deem just and appropriate.

/s/
Michael S. Caruso
Administrative Law Judge

Dated: December 11, 2015
Albany, New York