

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

In the Matter of the Alleged Violation of Article 71 of the
Environmental Conservation Law of the State of New York,

-by-

SALEH OMAR and ALI AHMED,

Respondents.

ORDER

**DEC File No.
R9-20190508-36**

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department or DEC) alleges that respondents Saleh Omar (Omar) and Ali Ahmed (Ahmed) violated Environmental Conservation Law (ECL) 71-1929(1) by failing to comply with order on consent R9-20190508-36 (consent order), executed by the Department on April 19, 2021. The consent order addressed violations at respondents' petroleum bulk storage (PBS) facility located at 400-410 Rhode Island Street, Buffalo, New York (facility).

The consent order imposed a penalty of ten thousand nine hundred fifty dollars (\$10,950). Respondents were to pay nine hundred twelve dollars and fifty cents (\$912.50) on their signing of the order, with the remaining payable penalty to be paid in monthly installments of nine hundred twelve dollars and fifty cents. In addition, under the terms of the consent order, respondents were required to complete twenty (20) compliance milestones within thirty (30) days of execution of the order (*see* consent order, Appendix A [Compliance Schedule]). Respondents were to complete the compliance work by May 20, 2021 (*see id.*).

Staff visited the facility on April 9, 2021. Based on that visit, staff determined that most of the twenty (20) corrective actions had not been completed and also observed new violations regarding the rusting out of one of the catch basins, and the lack of maintenance of the tank top sumps and both dispenser sumps for the tank system (*see* Exhibit 1 [Affidavit of Patrick Diez, sworn to September 21, 2021 (Diez Affidavit), ¶¶ 15-16], and Exhibit F [letter dated April 20, 2021 from DEC Attorney Teresa J. Mucha to respondents]). Staff referenced the lack of maintenance of the equipment as violations of 6 NYCRR 613-2.2(a)(6). In addition, respondents made only six (6) of the twelve (12) installment payments, leaving an outstanding balance of five thousand four hundred seventy-five dollars (\$5,475) (*see* Exhibit 6 [Affidavit of Pamela Frasier, sworn to September 13, 2021, ¶¶ 5-13]).

Department staff in a motion for order without hearing in lieu of complaint dated September 20, 2021 (motion) requests the payment of the remainder of the penalty due under the order (\$5,475) and the imposition of a further penalty of ten thousand dollars (\$10,000) for respondents' violation of the consent order. In addition, Department staff sought respondents' completion of the corrective actions mandated by the consent order and the correction of the additional violations identified in the April 9, 2021 visit by staff of the facility. Respondents

failed to file an answer to the motion (*see* Summary Report at 1- 2). Administrative Law Judge (ALJ) Jennifer M. Ukeritis of the Department’s Office of Hearings and Mediation Services was assigned to this matter. ALJ Ukeritis prepared the attached summary report, which I adopt as my decision in this matter, subject to my comments below.

As a consequence of respondents’ failure to answer, the ALJ recommends that Department staff’s motion for an order without hearing be granted for violation of the consent order (*see* Summary Report at 6-7). Based on the motion and papers submitted with and in support of the motion, I concur with the ALJ that Department staff’s proof presents a *prima facie* showing that respondents failed to comply with, and are in violation of, the consent order.

Department staff, in its papers, sought a civil penalty in the amount of ten thousand dollars (\$10,000), plus payment of the outstanding amount of the penalty due pursuant to the order (five thousand four hundred seventy-five dollars [\$5,475 dollars]), for a total of \$15,475.

ECL 71-1929(1) provides that “[a]person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation.” In addition such person may be enjoined from continuing such a violation (*see id.*).

The civil penalty that Department staff is requesting is consistent with ECL 71-1929, the Department’s Civil Penalty Policy (DEE-1) dated June 20, 1990, and administrative precedent (*see* Diez Affidavit, ¶¶ 26-27; Affirmation of Teresa J. Mucha dated September 20, 2021 ¶¶ 7-23). I note that compliance with the legal requirements that govern PBS facilities is important to public health and the environment and helps protect the soils, groundwater, and the habitats of fish and wildlife of New York State (*see* Diez Affidavit, ¶¶ 23-24).

Based on the record before me, the penalty of ten thousand dollars (\$10,000) for violation of the consent order, as requested by staff and recommended by the ALJ, is authorized and appropriate. I direct that respondents submit the civil penalty of and the remaining balance from the consent order of \$5,475 to the Department within thirty (30) days of the service of this order upon respondents. As with the amount owed pursuant to the consent order, the penalty for violation of the consent order is imposed jointly and severally on respondents.

Department staff also requests that respondents be directed to comply within thirty (30) days of the service of the Commissioner’s Order and address the following outstanding corrective action items that were listed in the consent order and those that were identified during staff’s inspection of the facility in April 2021:

- a. Submit a copy of the as-built plans for the facility showing the locations of all the tanks and required equipment;
- b. Install shear valves at dispensers 1/2 and 3/4 and submit color photographs confirming the installation of the equipment;

- c. Properly label the fill port for tank 1 and submit color photographs confirming the completion of this item;
- d. Properly color code the fill ports for tanks 1 and 3 and submit color photographs confirming the completion of this item;
- e. Submit copies of the cathodic protection system testing records for tanks 1, 2 and 3 within the last twelve months;
- f. Submit copies of the annual cathodic protection system monitoring records for tanks 1, 2 and 3 performed within the last three years;
- g. Submit copies of properly reconciled inventory records for tanks 1, 2 and 3 for the past six months;
- h. Submit copies of the monthly operability records for the leak detection system for tanks 1, 2 and 3 for the past six months;
- i. Investigate the cause of the fuel alarm activation and submit documentation of the results of the investigation;
- j. Repair or replace the spill bucket at tank 2 or test it for tightness and submit the results;
- k. Clean and/or pump out the spill bucket at tank 3 and submit a color photograph confirming the completion of the item;
- l. Clean and/or pump out the tank top sumps for tanks 2 and 3 and submit color photographs confirming the completion of the item;
- m. Clean and/or pump out the piping access sump located between tanks 1 and 2 and submit color photographs confirming the completion of the item; and
- n. Clean all tank top sumps and both dispenser sumps and submit color photographs confirming the completion of the item.

(see Motion, Wherefore Clause III and accompanying Attachment A). The corrective actions listed in the consent order (listed as a-m above) remain respondents' obligations to address. With respect to the additional violations identified at the facility during the post-consent order April 9, 2021 staff inspection visit (which are set forth in the above item "n"), I do not see that these new violations were charged in the motion. Although the motion states that the inspection revealed two new violations, the specific regulatory sections for the violations are absent from the motion which is the charging instrument here. Accordingly, as stated by the ALJ, the violations in item "n" were not properly before the ALJ in this proceeding (see Summary Report at 6). I note however that proper maintenance of the tank top sumps and dispenser sumps remain an ongoing legal obligation of respondents.

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

- I. Department staff's motion for order without hearing in lieu of complaint pursuant to 6 NYCRR 622.12 is granted. By failing to answer the motion in this proceeding, respondents Saleh Omar and Ali Ahmed waived their rights to be heard at a hearing.
- II. Based on the pleadings and papers submitted with and in support of Department staff's motion for order without hearing in lieu of complaint, respondents Saleh Omar and Ali Ahmed are determined to have failed to comply with order on consent R9-20190508-36

that was signed by both respondents, and, accordingly, respondents are in violation of ECL 71-1929(1).

- III. Respondents Saleh Omar and Ali Ahmed are hereby assessed, jointly and severally, a civil penalty in the amount of ten thousand dollars (\$10,000) for violation of consent order R9-20190508-36, to be paid within thirty (30) days of the service of this order upon respondents. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation at the address noted in paragraph VI of this order.
- IV. Respondents Saleh Omar and Ali Ahmed are also directed, jointly and severally, to pay the remainder of the outstanding balance under the order on consent, that is five thousand four hundred seventy five dollars (\$5,475) within thirty (30) days of the service of this order upon respondents. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation at the address noted in paragraph VI of this order.
- V. Respondents Saleh Omar and Ali Ahmed are hereby directed within thirty (30) days of the service of this order upon respondents to comply jointly and severally with the following outstanding compliance items:
 - A. Submit a copy of the as-built plans for the facility showing the locations of all the tanks and required equipment;
 - B. Install shear valves at dispensers 1/2 and 3/4 and submit color photographs confirming the installation of the equipment;
 - C. Properly label the fill port for tank 1 and submit color photographs confirming the completion of this item;
 - D. Properly color code the fill ports for tanks 1 and 3 and submit color photographs confirming the completion of this item;
 - E. Submit copies of the cathodic protection system testing records for tanks 1, 2 and 3 within the last twelve months;
 - F. Submit copies of the annual cathodic protection system monitoring records for tanks 1, 2 and 3 performed within the last three years;
 - G. Submit copies of properly reconciled inventory records for tanks 1, 2 and 3 for the past six months;
 - H. Submit copies of the monthly operability records for the leak detection system for tanks 1, 2 and 3 for the past six months;

- I. Investigate the cause of the fuel alarm activation and submit documentation of the results of the investigation;
 - J. Repair or replace the spill bucket at tank 2 or test it for tightness and submit the results;
 - K. Clean and/or pump out the spill bucket at tank 3 and submit a color photograph confirming the completion of the item;
 - L. Clean and/or pump out the tank top sumps for tanks 2 and 3 and submit color photographs confirming the completion of the item; and
 - M. Clean and/or pump out the piping access sump located between tanks 1 and 2 and submit color photographs confirming the completion of the item.
- VI. The civil penalty payment of ten thousand dollars (\$10,000) and the outstanding payment of five thousand four hundred seventy-five dollars (\$5,475) owed under the consent order shall be sent to the following address:

Teresa J. Mucha, Esq.
Associate Attorney
Office of General Counsel, Region 9
New York State Department of Environmental Conservation
700 Delaware Avenue
Buffalo, NY 14209.

- VII. Any questions or other correspondence regarding this order shall also be addressed to Teresa J. Mucha, Esq. at the address referenced in paragraph VI of this order.
- VIII. The provisions, terms and conditions of this order shall bind respondents Saleh Omar and Ali Ahmed 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: November 21, 2022
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 71 of the
Environmental Conservation Law of the State of New York
by

SUMMARY REPORT

DEC File No.
R9-20190508-36

SALEH OMAR AND ALI AHMED,

Respondent.

Appearance of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Teresa J. Mucha, Associate Regional Attorney, of counsel) for staff of the Department of Environmental Conservation
- No appearance for respondents.

Procedural History

By notice of motion for order without hearing in lieu of complaint dated September 20, 2021, staff of the New York State Department of Environmental Conservation (Department) commenced this enforcement proceeding against respondents, Saleh Omar (respondent Omar) and Ali Ahmed (respondent Ahmed), for alleged violations of Environmental Conservation Law (ECL) Article 71, Title 19 at respondents' petroleum bulk storage (PBS) facility located at 400-410 Rhode Island Street, Buffalo, New York (facility).

Department staff served the motion and supporting papers on respondents by certified mail.¹ Respondent Ahmed was served at his last known address of 49 Goodrich Road, Lackawanna, New York on October 14, 2021 (*see* affidavit of service of Pamela Frasier, sworn to on October 12, 2021 [Frasier Aff. Service] *and* Letter from T. Mucha dated June 14, 2022, regarding tracking of motion papers [Mucha Service Ltr June 2022]). Respondent Omar was ultimately served at 1101 West Commonwealth Avenue, Fullerton, California on November 19, 2021 (*see* Mucha Service Ltr June 2022).² The notice of motion instructed respondents that a written response must be filed within twenty days of the receipt of the motion. Respondent Ahmed's answer was due on November 4, 2021, and respondent Omar's answer was due on

¹ Originally, staff served the motion papers dated September 20, 2021, by regular mail on September 20, 2021, even though that affidavit of service stated it was certified return receipt mailing. (*See* Motion Exhibit 7 and Mucha Service Ltr June 2022). Department staff then served it certified mail on October 12, 2021. (*See* Frasier Aff. Service).

² Respondent Omar was originally served at the previously used for service address of 1145 W. Chase Circle, Corona, California, but that was returned to sender on November 12, 2022. (*See* Mucha Service Ltr June 2022).

December 10, 2021. Both respondents failed to file a response. By letter dated November 2, 2021, this matter was assigned to me.

Department's motion alleges a single violation for failure to comply with the Order on Consent executed on April 19, 2021. Department staff's papers consist of a notice of motion dated September 20, 2021; motion for order without hearing in lieu of a complaint dated September 20, 2021; affidavit of Patrick Diez sworn to on September 16, 2021 (Diez Aff.), attaching seven exhibits; six other exhibits, and the affirmation of Teresa J. Mucha dated September 20, 2021 (Mucha Affirmation). (*See Appendix A attached hereto.*)

Staff requests that the commissioner issue an order:

- I. "Finding Respondents in violation of Article 71 of the ECL as outlined in this motion;
- II. Requiring Respondents, jointly and severally, to pay a civil penalty of \$15,475;
- III. Requiring Respondents to perform the outstanding corrective actions at the Facility as outlined below:
 1. Submit a copy of the as-built plans for the Facility showing the locations of all the tanks and required equipment.
 2. Install shear valves at dispensers 1/2 and 3/4 and submit color photographs confirming the installation of the equipment.
 3. Properly label the fill port for tank 1 and submit color photographs confirming the completion of this item.
 4. Properly color code the fill ports for tanks 1 and 3 and submit color photographs confirming the completion of this item.
 5. Submit copies of the cathodic protection system testing records for tanks 1, 2 and 3 within the last twelve months.
 6. Submit copies of the annual cathodic protection system monitoring records for tanks 1, 2 and 3 performed within the last three years.
 7. Submit copies of properly reconciled inventory records for tanks 1, 2 and 3 for the past six months.
 8. Submit copies of the monthly operability records for the leak detection system for tanks 1, 2 and 3 for the past six months.
 9. Investigate the cause of the fuel alarm activation and submit documentation of the results of the investigation.
 10. Repair or replace the spill bucket at tank 2 or test it for tightness and submit the results.
 11. Clean and/or pump out the spill bucket at tank 3 and submit a color photograph confirming the completion of the item.
 12. Clean and/or pump out the tank top sumps for tanks 2 and 3 and submit color photographs confirming the completion of the item.
 13. Clean and/or pump out the piping access sump located between tanks 1 and 2 and submit color photographs confirming the completion of the item.
 14. Clean all tank top sumps and both dispenser sumps and submit color photographs confirming the completion of the item.

IV. Ordering such other relief as may be just and proper.” (Motion pp. 6-7)

Applicable Regulatory Provisions

ECL 71-1929.1 states that “[a] person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

Findings Of Fact

1. Respondent Omar is a person and the owner of the facility. (*See* Diez Aff. Exhibit A [2020 PBS application], Motion Exhibit 2 [2018 Order on Consent], *and* Diez Aff. Exhibit C [2021 Order on Consent]).
2. Respondent Ahmed is a person and the operator of the facility. (*See* Diez Aff. Exhibit A [2020 PBS application] *and* Diez Aff. Exhibit C [2021 Order on Consent]).
3. The facility has three PBS tanks: Tanks 1 and 2 are both 6,000-gallon tanks installed on November 1, 1988, and Tank 3 is a 4,000-gallon tank installed on November 30, 2002. (*See* Diez Aff. Exhibits A and B.)
4. The facility has a PBS registration # 9-472336, modified on October 29, 2020, that expired on October 18, 2021. (*See* Diez Aff. Exhibit B.)
5. Patrick Diez is an Environmental Program Specialist in the Department’s Division of Environmental Remediation, PBS Unit in the Region 9 office. (*See* Diez Aff. ¶ 2.)
6. As part of his duties, Mr. Diez inspects PBS facilities, assists the regulated community with PBS compliance, and assists with enforcement of violations of PBS laws and regulations, including developing civil penalties for PBS violations. Mr. Diez is familiar with article 17 and part 613 which regulate PBS tanks. (*See* Diez Aff. ¶¶ 3-4.)
7. Respondents Ahmed and Omar signed an order on consent on September 2, 2020, and October 21, 2020, respectively, accepting the nineteen enumerated causes of action and twenty compliance items to be completed within 30 days of the execution of the Order. (*See* Diez Aff. Exhibit C.)
8. The executed order also set up a payment plan of twelve payments of \$912.50 per month. (*See id.*)
9. The Department executed the order on consent on April 19, 2021 (2021 Order). (*See id.*)

10. Compliance schedule items were to be completed within 30 days of execution, which was May 19, 2021. (*See id.*)
11. Department staff completed an inspection of the facility on August 13, 2021 and issued a notice of violation dated August 18, 2021. (*See Diez Aff. Exhibit G.*)
12. The inspection demonstrated that only seven compliance items from the 2021 Order had been completed as required. (*See Motion ¶ 16 and Diez Aff. Exhibit G.*)
13. Of the compliance schedule milestones listed in Appendix A of the 2021 Order, what would be numbered as 1, 2, 11, 12, 13, 14, and 15 were documented as completed. (*Compare Exhibit C at 13 - 14 with Motion at 6 - 7.*) The uncompleted milestones are now listed as 1 - 13 in the Motion. (*See Motion at 6 - 7.*)
14. As of September 16, 2021, Department has not received a response to the notice of violation from either respondent. (*See Diez Aff. ¶ 21.*)
15. Respondents also stopped submitting monthly payments after 6 payments of 12 were made. (*See Motion Exhibit 6.*)
16. Respondents still owe \$5,475 under the order. (*See id.*)
17. Department staff mailed these motion papers by certified mail on October 12, 2021. (*See Frasier Aff. Service.*)
18. Respondent Ahmed was served this motion for order without hearing in lieu of complaint on October 14, 2021. (*See Mucha Service Ltr June 2022.*)
19. Respondent Omar was served this motion for order without hearing in lieu of complaint on November 19, 2022. (*See id.*)

DISCUSSION

Section 622.12 of 6 NYCRR provides for an order without hearing when upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party. “Summary judgment is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to judgment as a matter of law” (*Matter of Frank Perotta*, Partial Summary Order of the Commissioner, January 10, 1996, at 1, *adopting* ALJ Summary Report.)

CPLR 3212(b) provides that a motion for summary judgment shall be granted, “if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” Once the moving party has put forward a *prima facie* case, the burden shifts to the non-movant to produce sufficient evidence to establish a triable issue (*see Matter of Locaparra*, Commissioner’s Decision and Order, June 16, 2003).

Respondents have not submitted any response to Department staff's motion and therefore has failed to provide any material fact that would require a hearing. On an unopposed motion for order without hearing, the issue is whether Department staff has established its entitlement to summary judgment on the violations alleged in the motion (*see Matter of Edelstein*, Order of the Commissioner, July 18, 2014, at 2; *see also Matter of Hunt*, Decision and Order of the Commissioner, July 25, 2006, at 7 n2).

Pursuant to 6 NYCRR 622.12(a), Department staff has supported its motion for an order without hearing in lieu of complaint with the affidavit of Patrick Diez, an engineer in DEC Region 9 PBS unit. Mr. Diez conducted the PBS inspection and has reviewed the records maintained by the Department.

Department staff has demonstrated that respondent Omar is the owner of the facility. (*See Finding of Fact 1.*) Respondent Amhed is the facility operator. (*See Finding of Fact 2.*) Subpart 613-1 of 6 NYCRR imposes registration requirements on the owner of the facility. Pursuant to 6 NYCRR subparts 613-2 and 613-3, the tank and operating requirements of the subparts are imposed on the facility. Whenever the regulations impose a requirement on a facility, that requirement is imposed "on every operator and every tank system owner at the facility, unless expressly stated otherwise" (*see 6 NYCRR 613-1.2[d]*). As noted above, respondents signed an order on consent on September 2, 2020, and October 21, 2020, admitting the nineteen violations and agreeing to twenty compliance items to be completed within 30 days of the execution of the Order. As of August 13, 2021, seven of twenty compliance items were completed. (*See Findings of Fact 11, 12, and 13.*)

Based upon a review of the affirmation, affidavit, and exhibits attached hereto, I conclude that the Department staff's proof presents a *prima facie* showing that respondents failed to comply with the executed order and are now in violation of said order.

Pursuant to ECL 71-1929.1, any person who does not comply with an order of the commissioner is in violation and subject to a penalty of up to thirty-seven thousand, five hundred dollars a day per violation.

Staff has demonstrated that respondents were required to complete twenty compliance items in the executed order on or before May 19, 2021. (*See Finding of Fact 10.*) As of August 13, 2021, seven of twenty compliance items were completed. (*See Findings of Fact 11, 12, and 13.*) Accordingly, Department staff's motion for order without hearing in lieu of complaint is granted for the single violation alleged.

Before addressing the penalty, I must address the final compliance item requested in the Motion, which Department staff has listed as number 14. This appears to be a new compliance item, based upon new violations found in the August 2019 inspection and detailed in the August 18, 2019 notice of violation. The 2019 Order does not have a requirement to be in compliance with all PBS regulations, just the Order and its Appendix A. (*See Exhibit C at 6, ¶ I Compliance.*) Without it being properly cited in the Motion, there is no notice to the respondents

about the additional requirement. Given it is not part of the 2019 Order that is the subject of this Motion, it is not properly before me.

PENALTY

ECL 71-1929.1 provides for a civil penalty for each violation of thirty-seven five hundred thousand (\$37,500) dollars per day. Department staff details that half the payments required under the executed order were made by respondents and that a balance of \$5,475 is outstanding. (See Findings of Fact 15 and 16.) Department staff seeks the order's balance of \$5,475, and ten thousand dollars (\$10,000) for non-compliance with the executed order, and an Order directing respondents' compliance with the outstanding milestones in the executed order's compliance schedule. Department staff's submissions on the motion for order without hearing in lieu of complaint elaborate on the requested civil penalty, discussing the Department's Civil Penalty Policy (DEE-1) and administrative precedent concerning similar violations. (See Motion ¶¶ 17 to 24, Diez Aff. ¶¶ 23 to 29, Mucha Affirmation ¶¶ 6 to 24.) The requested penalty of \$15,475 is well below the statutory daily maximum penalty.

The \$15,475 requested penalty for the single violation is supported and authorized by the Department's penalty policies, applicable provisions of the ECL, and administrative precedent.

RECOMMENDATIONS

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

1. Granting Department staff's motion for order without hearing in lieu of complaint dated September 20, 2021, on the sole violation of non-compliance with the executed order, in violation of ECL 71-1929.1.
2. Directing respondents to jointly and severally pay a civil penalty in the amount of fifteen thousand four hundred seventy-five dollars (\$15,475) within thirty days of the Order.
3. Directing the respondents to comply within 30 days of the date of a Commissioner's Order with these outstanding compliance items:
 - a. Submit a copy of the as-built plans for the Facility showing the locations of all the tanks and required equipment.
 - b. Install shear valves at dispensers 1 /2 and 3/4 and submit color photographs confirming the installation of the equipment.
 - c. Properly label the fill port for tank 1 and submit color photographs confirming the completion of this item.
 - d. Properly color code the fill ports for tanks 1 and 3 and submit color photographs confirming the completion of this item.
 - e. Submit copies of the cathodic protection system testing records for tanks 1, 2 and 3 within the last twelve months.
 - f. Submit copies of the annual cathodic protection system monitoring records for tanks 1, 2 and 3 performed within the last three years.

- g. Submit copies of properly reconciled inventory records for tanks 1, 2 and 3 for the past six months.
- h. Submit copies of the monthly operability records for the leak detection system for tanks 1, 2 and 3 for the past six months.
- i. Investigate the cause of the fuel alarm activation and submit documentation of the results of the investigation.
- j. Repair or replace the spill bucket at tank 2 or test it for tightness and submit the results.
- k. Clean and/or pump out the spill bucket at tank 3 and submit a color photograph confirming the completion of the item.
- l. Clean and/or pump out the tank top sumps for tanks 2 and 3 and submit color photographs confirming the completion of the item.
- m. Clean and/or pump out the piping access sump located between tanks 1 and 2 and submit color photographs confirming the completion of the item.

/s/

Jennifer M. Ukeritis
Administrative Law Judge

Dated: November 15, 2022
Albany, New York

APPENDIX A
Matter of SALEH OMAR AND ALI AHMED
DEC File No. R9-20190508-36
Motion For Order Without Hearing

1. Notice of Motion for Order without Hearing, dated September 20, 2021.
2. Motion for Order without Hearing, dated September 20, 2021.
3. Exhibit 1 - Affidavit of Patrick Diez in Support of Motion for Order without Hearing, dated September 16, 2021, attaching the following exhibits:
 - A. PBS Application dated October 21, 2020.
 - B. PBS #9-472336 Facility Information Report printed August 24, 2021.
 - C. Order On Consent #19-27, R9-20190508-36, signed by respondent Ahmed on September 2, 2020; signed by respondent Omar on October 21, 2020, and executed by the Department on April 19, 2021.
 - D. Emails between T. Mucha and respondent Amhed regarding inability to pay dated April 2-3, 2021.
 - E. Email from P. Diez to respondent Ahmed regarding corrective action documentation on April 6, 2021.
 - F. Letter from T. Mucha to respondents dated April 20, 2021, re: non-compliance with Order on Consent, enclosing inability to pay paperwork and a copy of the order.
 - G. NOV dated August 18, 2021, attaching inspection report dated August 13, 2021.
4. Exhibit 2 – Order on Consent executed July 11, 2018, listing respondent Omar as sole respondent for failing to designate class A and B operators for the facility.
5. Exhibit 3 – Deed for facility, listing Fast Mart Gas and Grocery, LLC.
6. Exhibit 4 – Department of State Business Corporation information for deed owner.
7. Exhibit 5 – Copy of Articles of Incorporation for Fast Mart Gas and Grocery LLC.
8. Exhibit 6 – Affidavit of Pamela Frasier sworn to on September 13, 2021, regarding payments made towards Order penalty.
 - A. Exhibit A – Receipts of payments made.
9. Exhibit 7 – Affidavit of service of Pamela Frasier sworn to on September 20, 2021.³
10. Affirmation of Teresa J. Mucha dated September 20, 2021.
11. Affidavit of service by Pamela Frasier sworn to October 12, 2021.

³ This Affidavit states the motion papers were mailed by certified mail, but that was corrected by letter to ALJ. (*See Mucha Service Ltr June 2022.*)

12. Letter to ALJ from Teresa J. Mucha re: proof of service dated June 14, 2022.