

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

In the Matter of the Alleged
Violations of Article 19 of the
Environmental Conservation Law and
Part 230 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations,

- by -

WHITESTONE ENTERPRISES, INC.,

Respondent.

ORDER

DEC Case Nos.
D1-1000-03-08
D1-1001-03-08
D1-1002-03-08
D1-1008-03-07
D1-1009-03-07
D1-1010-03-07

Pursuant to a notice of hearing and complaint dated December 12, 2003, staff of the New York State Department of Environmental Conservation ("Department") commenced an administrative enforcement proceeding against respondent Whitestone Enterprises, Inc.

Department staff personally served the notice of hearing and complaint on March 30, 2004 in accordance with section 622.3 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). The notice of hearing and complaint was personally served on the president of respondent, Mr. Kemal Akkaya. Mr. Akkaya acknowledged that he was the president of Whitestone Enterprises.

In the complaint, Department staff alleged a total of thirteen violations at six gasoline dispensing sites owned or operated by respondent. The specific violations alleged at each site are as follows:

A. At respondent's gasoline dispensing site located at 980 Montauk Highway, Shirley, NY 11967, Department staff allege three violations which were discovered during inspections conducted on June 11, 2003 and June 25, 2003. The three alleged violations are:

1. that respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4);

2. that respondent failed to ensure the proper operation of its stage I vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4); and

3. that respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).

B. At respondent's gasoline dispensing site located at 2825 Montauk Highway, Brookhaven, NY 11719, Department staff allege two violations which were discovered during an inspection conducted on June 25, 2003. The two violations are:

1. that respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4); and

2. that respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).

C. At respondent's gasoline dispensing site located at 1641 Montauk Highway, Mastic, NY 11950, Department staff allege two violations which were discovered during an inspection conducted on June 11, 2003. The two violations are:

1. that respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4); and

2. that respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).

D. At respondent's gasoline dispensing site located at 49 Montauk Highway, Blue Point, NY 11715, Department staff allege one violation which was discovered during an inspection conducted on July 23, 2003. The violation is:

1. that respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR

230.2(k)(1)(ii).

E. At respondent's gasoline dispensing site located at 283 West Main Street, Patchogue, NY 11772, Department staff allege one violation which was discovered during an inspection conducted on July 23, 2003. The violation is:

1. that respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).

F. At respondent's gasoline dispensing site located at 255 East Main Street, Patchogue, NY 11772, Department staff allege four violations which were discovered during an inspection conducted on July 23, 2003. The four violations are:

1. that respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii);

2. that respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4);

3. that respondent failed to ensure the proper operation of its stage I vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4); and

4. that respondent failed to install a necessary stage II vapor collection and control system on pump #12 of the facility in violation of 6 NYCRR 230.2(f)(1).

Pursuant to 6 NYCRR 622.4, a timely answer was required to be served on Department staff within 20 days of respondent's receipt on March 30, 2004 of the notice of hearing and complaint. A pre-hearing conference was held between Department staff and counsel for respondent in April, 2004. Respondent requested an extension to June 30, 2004 in order to file an answer, which request was granted. However, respondent failed to file an answer by the June 30, 2004 deadline and no answer has been received to date by the Department.

On August 9, 2004, Department staff served a notice of motion for default judgment pursuant to 6 NYCRR 622.15 upon respondent. Respondent has not opposed the motion.

A copy of the notice of motion and supporting papers seeking the judgment by default was also filed with the Office of Hearings and Mediation Services on August 9, 2004. The matter was assigned to Administrative Law Judge (ALJ) P. Nicholas Garlick. A copy of the ALJ's Summary Report is attached. I adopt the ALJ's report as my decision in this matter, subject to my comments herein.

I conclude that the penalties sought, including a civil penalty, are appropriate based on the nature and number of violations.

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

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

II. Respondent is adjudged to be in default and to have waived its right to a hearing in this enforcement proceeding. Accordingly, Department staff's allegations against respondent in the complaint are deemed to have been admitted by respondent.

III. Respondent is adjudged to have violated 6 NYCRR 230.2(f)(1), 230.2(f)(4), and 230.2(k)(1)(ii) as set forth above at its six gasoline dispensing sites.

IV. Respondent Whitestone Enterprises, Inc. shall pay a civil penalty of forty thousand dollars (\$40,000) within 30 days from the date of this order. Payment of this penalty shall be by cashier's check, certified check or money order drawn to the order of "New York State Department Environmental Conservation" and delivered by overnight delivery, certified mail or hand delivery to: Anthony A. London, Esq., NYSDEC, 625 Broadway, 14th Floor, Albany, NY 12233-1550.

V. In addition to the monetary penalty described above, respondent shall take the following corrective actions at its gasoline dispensing sites within 30 days from the date of this order:

A. At respondent's gasoline dispensing site located at 980 Montauk Highway, Shirley, NY 11967, respondent shall:

1. immediately remove from service, lock and seal all dispensers that are associated with the stage II violations described above, to prevent vapor loss until approved replacement parts have been installed. Respondent shall submit proof of such repairs to the Department by certified mail at the following address before re-commencing operation of these dispensers: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.;

2. make all necessary repairs to ensure the proper operation of the stage I vapor collection and control systems and submit proof of such repairs to the Department by certified mail at the following address before re-commencing operation of these dispensers: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.; and

3. perform a dynamic back pressure test, liquid blockage test and leak test of its stage II systems and submit a notarized copy of the stage II test results to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.

B. At respondent's gasoline dispensing site located at 2825 Montauk Highway, Brookhaven, NY 11719, respondent shall:

1. immediately remove from service, lock and seal all dispensers that are associated with the stage II violations described above, to prevent vapor loss until approved replacement parts have been installed. Respondent shall submit proof of such repairs to the Department by certified mail at the following address before re-commencing operation of these dispensers: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.; and

2. perform a dynamic back pressure test, liquid blockage test and leak test of its stage II systems and submit a notarized copy of the stage II test results to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.

C. At respondent's gasoline dispensing site located at 1641 Montauk Highway, Mastic, NY 11950, respondent shall:

1. immediately remove from service, lock and seal all dispensers that are associated with the stage II violations described above, to prevent vapor loss until approved replacement parts have been installed. Respondent shall submit proof of such repairs to the Department by certified mail at the following address before re-commencing operation of these dispensers: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.; and

2. perform a dynamic back pressure test, liquid blockage test and leak test of its stage II systems and submit a notarized copy of the stage II test results to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.

D. At respondent's gasoline dispensing site located at 49 Montauk Highway, Blue Point, NY 11715, respondent shall:

1. perform a dynamic back pressure test, liquid blockage test and leak test of its stage II systems and submit a notarized copy of the stage II test results to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.

E. At respondent's gasoline dispensing site located at 283 West Main Street, Patchogue, NY 11772, respondent shall:

1. perform a dynamic back pressure test, liquid blockage test and leak test of its stage II systems and submit a notarized copy of the stage II test results to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.

F. At respondent's gasoline dispensing site located at 255 East Main Street, Patchogue, NY 11772, respondent shall:

1. perform a dynamic back pressure test, liquid

blockage test and leak test of its stage II systems and submit a notarized copy of the stage II test results to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.;

2. immediately remove from service, lock and seal all dispensers that are associated with the stage II violations described above, to prevent vapor loss until approved replacement parts have been installed. Respondent shall submit proof of such repairs to the Department by certified mail at the following address before re-commencing operation of these dispensers: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.;

3. make all necessary repairs to ensure the proper operation of the stage I vapor collection and control systems and submit proof of such repairs to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.; and

4. immediately remove from service, lock and seal the dispenser on pump #12 at this site until such time that an approved stage II vapor collection and control system on pump #12 at respondent's gasoline dispensing site has been installed. Further, respondent must submit proof that a stage II vapor collection and control system has been installed on pump #12 to the Department by certified mail at the following address: New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th floor, Albany, NY 12233, Attn: Anthony A. London, Esq.

VI. All communications from respondent to the Department concerning this order shall be made to Anthony A. London, Esq., New York State Department of Environmental Conservation, 14th Floor, 625 Broadway, Albany, NY 12233-1550.

VII. The provisions, terms and conditions of this order shall bind respondent and its successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Denise M. Sheehan
Acting Commissioner

Dated: Albany, New York
March 15, 2005

To: (by regular mail)
Anthony A. London, Esq.
NYSDEC
625 Broadway
Albany, NY 12233-5500

(by certified mail)
Bruce Vetri, Esq.
606c Montauk Highway
Bayport, N.Y. 11705

(by certified mail)
Whitestone Enterprises, Inc.
980 Montauk Highway
Shirley, NY 11967
Attn: Chief Executive Officer

(by certified mail)
Whitestone Enterprises, Inc.
2825 Montauk Highway
Brookhaven, NY 11719
Attn: Chief Executive Officer

(by certified mail)
Whitestone Enterprises, Inc.
1641 Montauk Highway
Mastic, NY 11950
Attn: Chief Executive Officer

(by certified mail)
Whitestone Enterprises, Inc.
49 Montauk Highway
Blue Point, NY 11715
Attn: Chief Executive Officer

(by certified mail)
Whitestone Enterprises, Inc.
283 West Main Street
Patchogue, NY 11772
Attn: Chief Executive Officer

(by certified mail)
Whitestone Enterprises, Inc.
255 East Main Street
Patchogue, NY 11772
Attn: Chief Executive Officer

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

In the Matter of the Alleged
Violations of Article 19 of the
Environmental Conservation Law of
the State of New York and Part 230
of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New
York.

- by -

WHITESTONE ENTERPRISES, INC.

Respondent.

SUMMARY REPORT

DEC Case Nos.
D1-1000-03-08
D1-1001-03-08
D1-1002-03-08
D1-1008-03-07
D1-1009-03-07
D1-1010-03-07

PROCEEDINGS

By a Complaint dated December 12, 2003, staff of the Department of Environmental Conservation ("DEC Staff") alleged thirteen violations at six gasoline dispensing sites owned and/or operated by Whitestone Enterprises, Inc. ("respondent"). The specific violations alleged at each site are set forth below:

1. At respondent's gasoline dispensing site located at 980 Montauk Highway, Shirley, NY 11967, DEC Staff allege three violations.
 - A. Respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of section 230.2(f)(4) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").
 - B. Respondent failed to ensure the proper operation of its stage I vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4).
 - C. Respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in

violation of 6 NYCRR 230.2(k)(1)(ii).

2. At respondent's gasoline dispensing site located at 2825 Montauk Highway, Brookhaven, NY 11719, DEC Staff allege two violations.
 - A. Respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4).
 - B. Respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).
3. At respondent's gasoline dispensing site located at 1641 Montauk Highway, Mastic, NY 11950, DEC Staff allege two violations.
 - A. Respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4).
 - B. Respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).
4. At respondent's gasoline dispensing site located at 49 Montauk Highway, Blue Point, NY 11715, DEC Staff allege one violation.
 - A. Respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).
5. At respondent's gasoline dispensing site located at 283 West Main Street, Patchogue, NY 11772, DEC Staff allege one violation.
 - A. Respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in

violation of 6 NYCRR 230.2(k)(1)(ii).

6. At respondent's gasoline dispensing site located at 255 East Main Street, Patchogue, NY 11772, DEC Staff allege four violations.
 - A. Respondent failed to perform dynamic back pressure, liquid blockage and leak tests at five year intervals after commencing operation, in violation of 6 NYCRR 230.2(k)(1)(ii).
 - B. Respondent failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4).
 - C. Respondent failed to ensure the proper operation of its stage I vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed, in violation of 6 NYCRR 230.2(f)(4).
 - D. Respondent failed to install a necessary stage II vapor collection and control system on pump #12 of the facility in violation of 6 NYCRR 230.2(f)(1).

The alleged violations were discovered during inspections of respondent's facilities during June and July of 2003.

By notice of motion dated August 9, 2004, DEC Staff sought a judgment by default against respondent for these alleged violations. In support of the motion, DEC Staff submitted an affirmation of DEC Staff Attorney Anthony A. London and the affidavits of Robert Waterfall and Thomas Gentile, members of DEC Staff. DEC Staff submitted an affidavit of service by Mark E. Simmons, a member of DEC Staff, stating that he hand delivered a copy of the notice of hearing and complaint on March 30, 2004 to Kemal Akkaya, President of Whitestone Enterprises, Inc., the respondent, at 980 Montauk Highway, Shirley, New York.

In his affirmation in support of the motion for default, DEC Staff Attorney Anthony A. London explains that the forty thousand dollar (\$40,000) civil penalty sought was calculated based upon the Department's Civil Penalty Policy. In this case, respondent has experienced a benefit from delaying the costs associated with performing the required tests and repairing defective equipment. Given the importance of this type of violation to the regulatory scheme and the failure of the respondent to cooperate to remedy

these alleged violations, the penalty sought by DEC Staff in this case is appropriate.

Respondent's counsel appeared at a pre-hearing conference via telephone in April, 2004. To date, however, respondent has failed to serve an answer, although the time to do so expired on June 30, 2004.

The Notice of Motion for Default Judgment and supporting papers were mailed to respondent on or about August 9, 2004 at each of the gasoline dispensing sites where violations are alleged to have occurred. Respondent has not opposed the motion.

DEFAULT PROCEDURES

Section 622.15, "Default Procedures" provides, in pertinent part: "(b) The motion for a default judgment ... must contain: (1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear or failure to file a timely answer; and (3) a proposed order."

The following Findings of Fact are based upon the papers submitted, as identified above.

FINDINGS OF FACT

1. On March 30, 2004, DEC Staff personally served a Notice of Hearing and Complaint on the President of Respondent. The time to answer or otherwise move was extended by DEC staff to June 30, 2004. No answer has been served to date.
2. Staff mailed the motion for default judgment and supporting papers to respondent on or about August 9, 2004. Respondent has not opposed said motion.
3. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR Section 622.15(b).

CONCLUSION

The motion for default judgment should be granted. This Summary Report and Staff's proposed Order (attached hereto) are referred to the Commissioner for final determination.

/s/

P. Nicholas Garlick
Administrative Law Judge

Dated: Albany, New York
October 29, 2004

To: Anthony A. London, Esq.
NYSDEC
625 Broadway
Albany, NY 12233-5500

Bruce Vetri, Esq.
606c Montauk Highway
Bayport, N.Y. 11705

Whitestone Enterprises, Inc.
980 Montauk Highway
Shirley, NY 11967
Attn: Chief Executive Officer

Whitestone Enterprises, Inc.
2825 Montauk Highway
Brookhaven, NY 11719
Attn: Chief Executive Officer

Whitestone Enterprises, Inc.
1641 Montauk Highway
Mastic, NY 11950
Attn: Chief Executive Officer

Whitestone Enterprises, Inc.
49 Montauk Highway
Blue Point, NY 11715
Attn: Chief Executive Officer

Whitestone Enterprises, Inc.
283 West Main Street
Patchogue, NY 11772
Attn: Chief Executive Officer

Whitestone Enterprises, Inc.
255 East Main Street
Patchogue, NY 11772
Attn: Chief Executive Officer