State of New York: Department of Environmental Conservation

In the Matter of the Alleged Violation of Article 17 of the Environmental Conservation Law ("ECL") of the State of New York, Article 12 of the Navigation Law of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") of the State of New York by,

DONALD ZIMMERMAN,

Respondent.

ORDER

Case No: 3-500005

WHEREAS:

1. Pursuant to a Notice of Hearing and Complaint dated May 22, 2001, an enforcement hearing was held before Administrative Law Judge ("ALJ") Daniel P. O'Connell on July 18, 2003 at the Region 3 office of the New York State Department of Environmental Conservation ("Department") in New Paltz, New York. Scott A. Herron, Esq., Senior Attorney, and Benjamin Conlon, Esq., Associate Attorney, appeared on behalf of Department staff. Steven Patterson, Esq., from Vergilis, Stenger, Roberts, Pergament & Viglotti in Pine Plains, New York, represented respondent Donald Zimmerman.

2. Upon review of the record and the attached hearing report, I hereby adopt the ALJ's findings of fact and conclusions subject to my comments below.

3. At the enforcement hearing, the parties stipulated to a number of facts concerning the liability of respondent Donald Zimmerman.

4. At the time of the violations, respondent owned a petroleum bulk storage facility at 2316 Route 44, Pleasant Valley, New York (the "facility"). The facility consisted of three 4,000-gallon underground petroleum bulk storage tanks.

5. Respondent violated 6 NYCRR 612.2 by failing to register the three underground petroleum bulk storage tanks at the facility.

6. Respondent violated 6 NYCRR 613.5 by failing to test the underground petroleum bulk storage tanks for tightness.

7. Respondent violated 6 NYCRR 613.3 by failing to permanently mark all the fill ports on the underground petroleum bulk storage tanks to identify the product stored inside them.

8. Beginning September 26, 2000, respondent stockpiled petroleum contaminated soil at the facility for 60 days without approval from the Department in violation of 6 NYCRR 360-1.7(b)(4).

9. Respondent violated ECL 17-0501 and Navigation Law § 173 on September 7, 2000, when a petroleum discharge occurred at the facility.

10. Department staff, at the conclusion of the enforcement hearing, also requested a civil penalty of thirty thousand dollars, although Department staff had initially requested a civil penalty of fifty thousand dollars in its complaint.

11. The ALJ recommends a total civil penalty of thirty thousand dollars ($30,000) apportioned as follows:

    (a) $1,000 for violating 6 NYCRR 612.2;

    (b) $9,000 for violating 6 NYCRR 613.5;

    (c) $500 for violating 6 NYCRR 613.3; and

    (d) $19,500 for violating ECL 17-0501 and Navigation Law § 173.

12. Based on a review of this record and the number of violations that have occurred, however, a higher penalty of thirty-five thousand dollars ($35,000) is justified, allocated as follows:

    (a) $1,000 for violating 6 NYCRR 612.2;

    (b) $13,000 for violating 6 NYCRR 613.5. This increase from $9,000 to $13,000 is to take into account the avoided costs of respondent's failure to test the three tanks at the facility, and the critical importance of complying with the tank testing requirement in order to detect any possible petroleum releases to the environment. Because respondent failed to test the tanks for four testing cycles (1987, 1992, 1997 and

2002), a substantially higher penalty would be appropriate, but consideration is being given to the costs of any additional investigation and remedial work at the facility and mitigating factors in the record;

(c) $500 for violating 6 NYCRR 613.3;

(d) $19,500 for violating ECL 17-0501 and Navigation Law § 173; and

(e) $1,000 for violating 6 NYCRR 360-1.7(b)(4). Although no penalty was recommended for this violation, the improper storage of petroleum-contaminated soil poses an environmental risk and the imposition of a penalty is appropriate on this record.

13. Although respondent's counsel provided certain documents concerning the remedial activity that had been undertaken at the facility (which were introduced during the enforcement hearing as Exhibit 9), the documentation is not complete with respect to the extent of any remaining contamination at the facility and the status of the remedial activity.

14. Department staff proposed in the complaint that additional investigation of contamination at the facility, and to the extent necessary additional remediation, be undertaken. Respondent is legally responsible for any and all investigations and remediation relating to the violations set forth in this order.

THEREFORE, having considered this matter, it is ORDERED that:

I. Respondent Donald Zimmerman, having violated the above-referenced provisions of 6 NYCRR parts 360, 612 and 613, ECL 17-0501 and Navigation Law § 173, is assessed a total civil penalty of thirty-five thousand dollars ($35,000).

II. Payment of the civil penalty of thirty-five thousand dollars ($35,000) is due and payable within thirty (30) days of service of this order upon respondent. Payment shall be in the form of a cashier's check, certified check or money order payable to the order of the "New York State Department of Environmental Conservation," and shall be mailed or delivered to the following address: Region 3 Director, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561-1696.

III. To allow for a proper evaluation of the environmental conditions at the facility, within thirty (30) days of service of this order upon respondent, respondent shall provide the Department with any additional documentation in his possession concerning the presence of contamination at the facility and the status of the remedial work that has been performed to date including, but not limited to, the amount of petroleum-contaminated soil that was stockpiled at the facility and was excavated during remedial activity at the facility, the sites where the petroleum-contaminated soil and any other materials arising from the removal of the tanks at the facility were disposed, and the results of any soil and groundwater sampling (prior and subsequent to the excavation of the tanks) at the facility. In the event that respondent has no such additional documentation, he shall so notify the Department in writing within thirty (30) days of service of this order upon him.

IV. If the Department, based on a review of information, determines that the investigation of the facility is incomplete or inadequate, the Department shall so notify respondent in writing. Such notification shall reference what is incomplete or inadequate and needs to be addressed in, and implemented by, an investigation plan. Respondent shall either:

(a) cause to be prepared an investigation plan for the Department's review and approval within thirty (30) days of such notification and, subsequent to the Department's approval of the investigation plan, cause the Department-approved plan to be implemented. Respondent shall be responsible for paying any oversight costs incurred by or on behalf of the Department with respect to investigation activities; or

(b) reimburse the costs for any Department-authorized or Department-conducted investigation activities, including but not limited to the preparation of an investigation plan. Respondent shall provide reimbursement for any invoice for investigation costs within thirty (30) days following the receipt of such invoice.

V. The Department shall determine, based on a review of the investigation conducted pursuant to Section IV or, if an investigation is not required by the Department, based on information it has concerning the facility, whether additional remedial activity will be required. If

additional remediation is required, the Department shall notify the respondent in writing. Such notification shall reference what needs to be addressed and implemented by a remediation plan. Respondent shall either:

(a) cause a remediation plan to be submitted to the Department for the Department's review and approval within thirty (30) days of such notification, and following Department's approval, cause the Department-approved remediation plan to be implemented. Respondent shall be responsible for paying any oversight costs incurred by or on behalf of the Department with respect to remediation activities; or

(b) reimburse the costs for any Department-authorized or Department-conducted remedial activities. Respondent shall provide reimbursement for any invoice for remediation costs within thirty (30) days after receiving such invoice.

VI. All communications between respondent and the Department concerning this order shall be made to the following address: Region 3 Director, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561-1696.

VII. The imposition of the civil penalty provided for in this order shall not impair, limit or abridge the right of the Department or the State of New York to recover from respondent or any other party the investigation or remediation costs that the Department or the State of New York incurs with respect to the facility.

VIII. The provisions, terms and conditions of this order shall bind respondent, his successors and assigns.

New York State Department of
Environmental Conservation

/s/

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By: Erin M. Crotty, Commissioner

Dated: March 19, 2004
Albany, New York

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In the Matter of the Alleged Violation of Article 17 of the Environmental Conservation Law of the State of New York (ECL), Article 12 of the Navigation Law of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations (6 NYCRR) of the State of New York by:

DONALD ZIMMERMAN

Respondent

DEC Case No. 3-500005

Hearing Report

-by-

/s/

Daniel P. O'Connell
Administrative Law Judge

Proceedings

Staff of the New York State Department of Environmental Conservation (Department Staff) initiated this enforcement action by duly serving a notice of hearing and complaint dated May 22, 2001 upon Donald Zimmerman (Respondent). According to the complaint, Respondent owns a petroleum bulk storage (PBS) facility at 2316 Route 44, Pleasant Valley, New York (the Facility). Respondent allegedly violated provisions of Environmental Conservation Law (ECL) article 17, titles 3 and 10, and implementing regulations at Title 6 of the Official Compilation of Codes, Rules and Regulations (6 NYCRR) parts 612 and 613, when Respondent did not: (1) register petroleum bulk storage tanks at his Facility; (2) test the tanks for tightness; (3) maintain leak monitoring systems; (4) maintain inventory records; (5) maintain overfill prevention equipment; (6) have cathodic protection for steel tanks; and (7) mark fill ports to identify the product stored in the tanks. In addition, Department Staff alleged that Respondent violated 6 NYCRR 360-1.7(b)(4) by stockpiling contaminated soil at the Facility for 60 days starting on September 26, 2000 without any approval from the Department. Department Staff also alleged that Respondent discharged petroleum to the waters of the state on September 7, 2000 in violation of ECL 17-0501 and Navigation Law § 173.

The notice advised Respondent that he had to file an answer within 20 days after receiving the notice of hearing and complaint. The notice also scheduled a pre-hearing conference for June 14, 2001 at the Department's Region 3 Offices in New Paltz, New York. The notice further advised Respondent that if he did not file an answer, or appear at the pre-hearing conference, he would waive his right to a hearing and could be found in default. Respondent appeared at the scheduled pre-hearing conference, but never filed an answer.

With a cover letter dated August 7, 2002, Department Staff filed a statement of readiness pursuant to 6 NYCRR 622.9. By letter dated September 4, 2002, Administrative Law Judge (ALJ) Daniel P. O'Connell from the Department's Office of Hearings and Mediation Services informed the parties that he was assigned to the case, and directed the parties to confer about a date for the hearing. After adjournments duly taken, the hearing convened on July 18, 2003 at 10:00 a.m. at the Department's Region 3 Offices, and was held pursuant to the procedures outlined in 6 NYCRR part 622.

At the hearing, Department Staff appeared by Scott A. Herron, Esq., Senior Attorney, and Benjamin Conlon, Esq., Associate Attorney. R. Daniel Bendell, Supervisor of the Region 3 Petroleum Bulk Storage Unit, and Melissa Mastro, an Environmental Engineer with the Region 3 Spill Response Unit, testified on behalf of the Department.

Steven Patterson, Esq., from Vergilis, Stenger, Roberts, Pergament & Viglotti, PC, Pine Plains, New York appeared for Respondent, Donald Zimmerman. Mr. Zimmerman was not present at the hearing. Respondent's counsel did not call any witnesses, but cross-examined Department Staff's.

The Office of Hearings and Mediation Services received the stenographic transcript of the hearing on August 29, 2003, whereupon the record of the hearing closed.

Department Staff's Position

The May 22, 2001 complaint alleged nine violations, as described above. For these alleged violations, Department Staff requested an order from the Commissioner that would assess a total civil penalty of $50,000 dollars in the complaint; recover any direct and indirect costs related to remediation of the Facility; and direct Respondent to: (1) register his tanks; (2) close and remove all underground PBS tanks at the Facility consistent with the requirements outlined in 6 NYCRR 613.9(b); (3) submit a closure report; and (4) remove all contaminated soil from the Facility. Department Staff also seeks a spill investigation and remediation plan. The details concerning the investigation and remediation plan are outlined in the May 22, 2001 complaint. In its closing statement, Department Staff reduced its total civil penalty request to $30,000.

Respondent's Position

Although Mr. Zimmerman appeared at the pre-hearing conference, Respondent did not answer the complaint. At the hearing, Respondent's counsel offered evidence to show that Mr. Zimmerman had, at least partially, remediated the Facility. In addition, Respondent's counsel argued that Respondent is elderly (88 years old). According to his attorney, Respondent no longer owns the Facility because he transferred title to the property to an unidentified person or corporation in exchange for remedial services. Because Respondent transferred ownership of the Facility, Respondent's counsel argued that Mr. Zimmerman should not be held liable for any civil penalties or for additional site remediation.

Findings of Fact

1. Department Staff served the notice of hearing and complaint dated May 22, 2001 by certified mail, return receipt requested, upon Donald Zimmerman. Department Staff received the signed domestic return receipt from the US Postal Service on May 25, 2001.

2. Respondent owns a petroleum bulk storage facility at 2316 Route 44, Pleasant Valley, New York (the Facility). It is not known when Respondent purchased the Facility. The Facility consists of three 4,000 gallon underground petroleum storage tanks.

3. Respondent never registered the Facility and its three underground petroleum storage tanks.

4. Respondent failed to test the tightness of the three underground petroleum storage tanks at the Facility. Four testing cycles have passed (1987, 1992, 1997 and 2002) since the effective date of 6 NYCRR part 613.

5. Respondent did not permanently mark all the fill ports on the underground petroleum storage tanks to identify the product stored inside the tanks.

6. Beginning September 26, 2000, Respondent stockpiled petroleum contaminated soil at the Facility for 60 days without approval from the Department.

7. On September 7, 2000, a petroleum discharge occurred at the Facility. Respondent was a responsible party for the discharge. The spill is identified by spill number 00-06755.

8. The total estimated avoided costs associated with Respondent's failure to comply with the regulations are between $13,500 and $13,600. The applicable five year registration fee is $250. Because four registration periods have passed since the effective date of the regulations, the avoided cost for not registering the Facility is $1,000 (4 periods x $250). The cost associated with testing a tank for tightness is about $1,000 per tank. The Facility consists of three tanks, and since the effective date of the regulations, four testing cycles have passed (1987, 1992, 1997, and 2002). Therefore, the total avoided cost associated with failing to test the tanks for tightness is at least $12,000. The cost to color code the tank portals is between $500 and $600.

9. When Respondent excavated the tanks at the Facility, they had holes in them.

10. By letter dated February 1, 2001, Department Staff informed Respondent that he was improperly storing petroleum contaminated soil at the Facility. In a subsequent letter dated April 6, 2001, Department Staff notified Respondent that the petroleum contaminated soil had to be removed from the Facility. Respondent did not respond to these letters, and did not give Department Staff permission to access the Facility. In addition, Respondent did not provide documentation to Department Staff about whether the Facility has been completely remediated. Department Staff needs additional information about: (1) how much contaminated soil was removed from the Facility; (2) where any contaminated soil was sent for disposal; (3) whether soil samples were sent to a laboratory for analysis; and (4) whether petroleum products migrated offsite and contaminated nearby wells.

11. Based on the Department's penalty matrix, the number of points associated with spill number 00-06755 is 20. The number of points associated with this spill is based, in part, on the factors identified in the preceding Finding of Fact. The civil penalty range associated with 20 points is from $20,000 to $49,999.

Discussion

I. Liability

Parts 612 and 613 of 6 NYCRR apply to aboveground and underground petroleum storage facilities with a combined storage capacity over 1,100 gallons. The purpose of 6 NYCRR parts 612 and 613 is to regulate how petroleum products are handled and stored so as to protect public health, as well as the land and waters of the state.

Definitions of the terms, "facility" or "storage facility" are provided at 6 NYCRR 612.1(c)(10) and mean one or more stationary tanks, with associated piping and fittings, that have a combined storage capacity of over 1,100 gallons of petroleum at the same site. A facility may include aboveground tanks, underground tanks, or a combination of both. An "existing facility" is one which has been constructed and is capable of being operated as of January 26, 1985 (see 6 NYCRR 612.1[c][9]).

At the hearing, the parties stipulated to the facts alleged in the complaint at Paragraphs 1, 12, 13, 18, 19, and 20, and the violations alleged in Paragraphs 12, 13, 18, 19, and 20. As part of the stipulation, Department Staff withdrew the violations alleged in Paragraphs 14, 15, 16, and 17 of the May 22, 2001 complaint.

Findings of Fact 2 through 7 are based on the stipulation. Consequently, Respondent owns the Facility. Respondent violated 6 NYCRR 612.2 by failing to register his Facility. Respondent violated 6 NYCRR 613.5 by failing to submit the proper tightness reports for the underground petroleum storage tanks at the Facility. Respondent violated 6 NYCRR 613.3 by not permanently marking all the fill ports to identify the products stored in the underground tanks. Respondent violated 6 NYCRR 360-1.7(b)(4) when, beginning on September 26, 2000, he stored petroleum contaminated soil at the Facility for more than 60 days without permission from the Department. Finally, Respondent violated ECL 17-0501 and Navigation Law § 173 when he discharged petroleum to the waters of the state on or about September 7, 2000.

II. Relief

The hearing focused on determining the appropriate civil penalty and the need for any additional remediation. As stated above, Department Staff offered two witnesses to support the requested civil penalty and additional remediation. R. Daniel Bendell is an Environmental Engineer, who supervises the region's Petroleum Bulk Storage Unit. Mr. Bendell's testimony focused on the civil penalty calculation for the violations of 6 NYCRR parts 612 and 613. Melissa Mastro is an Environmental Engineer with the region's Spill Response Unit. Ms. Mastro's responsibilities include investigating and overseeing the remediation of spills in Dutchess and Putnam Counties. The focus of Ms. Mastro's testimony was the civil penalty

calculation related to the petroleum release at the Facility in September 2000, as well as the need for additional remediation.

A. Civil Penalty

According to Department Staff's May 22, 2001 complaint, ECL 71-1929 authorizes a maximum civil penalty of $25,000 per day for violations of ECL article 17, title 10 and implementing regulations.[1] In addition, the complaint states that ECL 71-1941 authorizes a maximum civil penalty of $2,500 for each violation resulting from the spill of bulk liquids, and up to $500 per day that the violation continues.[2]

In the complaint, Department Staff requested a total civil penalty of $50,000. To calculate the civil penalty, Department Staff relied on the Civil Penalty Policy and the draft Penalty Guidelines for Petroleum Bulk Storage Violations. According to the Civil Penalty Policy, the civil penalty should be the sum of the benefit component, and the gravity component. The final amount of the civil penalty is then adjusted based on any aggravating or mitigating factors.

The benefit component of the civil penalty is an estimate of the economic gain accrued to the violator by not complying with the regulations. According to the unchallenged testimony of Department Staff witnesses, Respondent has avoided significant costs by not registering the tanks, and by failing to test them for tightness. Respondent obtained an additional economic benefit from not color coding the tank portals.

According to Mr. Bendell's unchallenged testimony, the applicable five year registration fee for a facility of this type is $250. Four registration periods have passed since the effective date of the regulations. Therefore, the avoided cost associated with failing to register the Facility is $1,000 (4 periods x $250).

The estimated cost associated with testing tanks for tightness is about $1,000 per tank, according to Mr. Bendell's unchallenged testimony. The Facility consists of three tanks, and four testing cycles have passed (1987, 1992, 1997 and 2002) since Respondent has owned the

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[1] Effective May 15, 2003, the civil penalty authorized by ECL 71-1929 was increased to $37,500 per day for each violation. Department Staff's May 22, 2001 notice of hearing and complaint predate the effective date of the amendment.

[2] ECL 71-1941 was also amended in 2003. The maximum civil penalty for an initial violation is now $3,750, and up to $750 may be assessed for each day that the violation continues. Department Staff's May 22, 2001 notice of hearing and complaint predate the effective date of the amendment.

Facility. Therefore, the total avoided cost associated with failing to test the tanks for tightness is $12,000.

Mr. Bendell testified further that it costs between $500 and $600 to color code the tank portals. Based on Mr. Bendell's unchallenged testimony, the total estimated avoided cost associated with Respondent's failure to comply with the regulations, therefore, is between $13,500 and $13,600.

The gravity component of the civil penalty reflects the seriousness of the violations. Factors that should be considered include the actual and potential environmental damage that has resulted, or may result, from the violations, as well as the significance of the violations, given Department Staff's regulatory mandates. Here, Mr. Bendell testified further that the potential for environmental harm is great for the following reasons. Department Staff initially had no reliable information about the tightness of the unprotected steel tanks at Respondent's Facility. This is why registering every facility and regularly testing tanks for tightness are important. Subsequently, when the tanks at the Facility were excavated, they had holes in them, which confirmed Department Staff's presumption that a petroleum release had occurred.

To determine the appropriate civil penalty associated with violations of ECL 17-0501 and Navigation Law § 173, Department Staff relied on a penalty matrix (see Exhibit 8), which is based on the Penalty Guidelines for Petroleum Bulk Storage Violations. Based on the matrix, Ms. Mastro testified that the appropriate civil penalty for the alleged violation ranges from $20,000 to $49,999. Ms. Mastro recommended a civil penalty of $20,000.

At the close of the hearing, Department Staff reduced the requested civil penalty from $50,000 to $30,000. The requested civil penalty was reduced, in part, because Department Staff withdrew four of the nine violations originally alleged in the complaint. In addition, Department Staff stated that Respondent did not operate the Facility as a gasoline station when he owned it. According to Staff, this circumstance is a mitigating factor because the Facility was not part of "a chain of gas stations" that could have been collectively mismanaged by Respondent.

The civil penalty requested by the Department Staff's is consistent with the amounts authorized by ECL 71-1929 and ECL 71-1941, and is consistent with the guidance outlined in the Civil Penalty Policy and the Penalty Guidelines for Petroleum Bulk Storage Violations. Therefore, the Commissioner should assess a total civil penalty of $30,000. The civil penalty should be apportioned as follows:

1. $1,000 for violating 6 NYCRR 612.2 by not renewing the registration of the three tanks at the Facility in a timely manner;

2. $9,000 for violating 6 NYCRR 613.5 by not testing the tightness of the three tanks at the Facility and for not submitting the appropriate reports;

3. $500 for violating 6 NYCRR 613.3 for not permanently marking all the fill ports to identify the products stored in the underground tanks; and

4. $19,500 for violating ECL 17-0501 and Navigation Law § 173 when Respondent discharged petroleum to the waters of the state on or about September 7, 2000.

The foregoing civil penalty recommendation takes into account the continuous nature of each violation.

B. Remediation and Site Access

Based on Ms. Mastro's unchallenged testimony, Respondent did not fully comply with the requirements for investigating and remediating the Facility. Although Respondent argued there was some compliance, Ms. Mastro explained that Respondent must provide the following information to determine whether any additional remediation is necessary. First, Respondent must identify the precise amount of contaminated soil removed from the Facility. Second, post-excavation samples would need to be collected and analyzed to verify that all contaminated materials have been removed from the soil around the leaking tanks. Third, Ms. Mastro recommended that groundwater samples should be taken to ensure that the groundwater was not contaminated, and advised further that samples from nearby wells may need to be collected and analyzed. Finally, additional groundwater monitoring may become necessary depending on the results of the groundwater analysis.

Respondent presented some of the required information to Department Staff (see Exhibit 9). Exhibit 9 is a set of documents collectively referred to as, "Cleanup and Tank Removal Information from Dutchess Environmental Construction, Inc." These documents include a series of cover letters that date from December 12, 2000 to July 31, 2001 with attached invoices for excavation work; petroleum analyses of materials from the site; disposal of contaminated soil and oil/water from the site; and delivery of fill to the site. However, Staff will have to verify this information. After Staff reviews this information, additional testing, and depending on the results of that testing, further remediation may be necessary.

Despite the representation made by Respondent's counsel that Mr. Zimmerman no longer owns the Facility, Staff maintains that Respondent owned the Facility when the spill occurred, and therefore, remains a responsible party regardless of whether he is the current owner. Staff argued further that the Department's contractors could obtain access to the Facility if additional remediation becomes necessary, and Respondent would be responsible for the costs incurred by the Department's contractors.

At the hearing, Respondent offered no evidence to prove that he no longer owns the Facility, or any information about who is the current owner. Respondent has the burden to prove that the Facility and property were transferred to another party, particularly since Respondent

stipulated that he owns the Facility (see Paragraph 1 of the May 22, 2001 complaint). Therefore, Respondent continues to own the Facility. As the owner, Respondent's liability for remediation continues until the Facility is permanently closed (see 6 NYCRR 613.9[b]).

Conclusions

1. Respondent violated 6 NYCRR 612.2 by failing to register his Facility.

2. Respondent violated 6 NYCRR 613.5 by failing to test the tightness of the underground storage tanks at the Facility, and to submit the appropriate reports.

3. Respondent violated 6 NYCRR 613.3 by not permanently marking all the fill ports to identify the products stored in the underground tanks.

4. Respondent violated 6 NYCRR 360-1.7(b)(4) when, beginning on September 26, 2000, he stored petroleum contaminated soil at the Facility for more than 60 days without permission from the Department.

5. Respondent violated ECL 17-0501 and Navigation Law § 173 when he discharged petroleum to the waters of the state on or about September 7, 2000.

Recommendations

The Commissioner should assess a civil penalty of $30,000 based on the calculation presented above. The Commissioner should direct Respondent to give the Department Staff any further documentation, in addition to Exhibit 9, that will establish the status of the remediation at the Facility. Respondent should be required to provide an investigation plan, if Department Staff determines that the information in Exhibit 9 and any subsequent information provided by Respondent concerning the partial remediation of the Facility is incomplete or inaccurate.