



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

NEW JERSEY DEPARTMENT OF)	<u>ADMINISTRATIVE ACTION</u>
ENVIRONMENTAL PROTECTION,)	FINAL DECISION
BUREAU OF HAZARDOUS WASTE)	
AND UST COMPLIANCE AND)	OAL DKT NO.: ECE-US 05567-12
ENFORCEMENT,)	AGENCY REF. NO.: PEA 060002-016459
)	
Petitioner,)	
)	
v.)	
)	
MUNIR DAIBES D/B/A 858 ROUTE 202)	
ASSOCIATES, ¹)	
)	
Respondent.)	

This Order addresses the appeal of an Administrative Order and Notice of Civil Administrative Penalty (AONOCAPA) issued on November 20, 2006, by the New Jersey Department of Environmental Protection (Department) to Munir Daibes d/b/a Route 202 Associates (Respondent), related to Respondent's commercial motor fuel station located at 858 Route 202, Montville Township, Morris County (facility), where three underground storage tanks (USTs) were maintained. The AONOCAPA alleged that during the Department's December 7, 2005, inspection of the facility, the Department found that Respondent failed to conduct release detection monitoring for product piping, in violation of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:14B-1 et seq., specifically, N.J.A.C. 7:14B-6.1(a)1.

¹ The caption has been revised to reflect the complete name of Respondent.

The Department utilized the penalty matrix in N.J.A.C. 7:14-8.5(f) and assessed a \$10,000 civil administrative penalty against Respondent, based on its determination that the seriousness and conduct for the violation were both moderate. Respondent had timely complied with the field notice of violation issued on December 5, 2005, after the inspection, which notice included three other violations for which no penalty was assessed in the AONOCAPA.² Therefore, the Department exercised its discretion to assess the penalty for the release detection monitoring violation at the minimum of the applicable penalty range.

Respondent filed a timely hearing request to contest the AONOCAPA. The Department granted the request and transmitted the matter to the Office of Administrative Law (OAL), where it was assigned to Administrative Law Judge (ALJ) Caridad F. Rigo. The parties participated in settlement conferences on June 4, July 8, and July 23, 2013, but were unable to resolve the issues. A hearing was scheduled for October 11, 2013. On or about September 12, 2013, the Department filed a motion for summary decision. Respondent did not oppose the motion but requested an adjournment of the hearing. The ALJ adjourned the hearing, after which the parties continued settlement discussions. Ultimately, the parties were unable to settle. The matter was scheduled for hearing on May 15, 2015, at which time the Department appeared but Respondent did not.

ALJ Rigo issued an Initial Decision on November 27, 2017, in which she set forth the procedural history of this matter and the undisputed facts, and noted that the Department exercised its discretion when it did not assess a penalty for the three other violations found during the December 7, 2005, inspection. The ALJ granted the Department's motion for summary decision and ordered that

² The violations were inaccurate registration of the USTs, in violation of N.J.A.C. 7:14B-2.1(a); failure to keep spill buckets free of product, in violation of N.J.A.C. 7:14B-5.1(d)1; and failure to annually test the line leak detectors, in violation of N.J.A.C. 7:14B-6.6(a)1.

Respondent is liable for the \$10,000 civil administrative penalty assessed in the AONOCAPA. No exceptions to the Initial Decision were filed.

Based on my review of the record, I find that the Department properly assessed the penalty in the AONOCAPA. Respondent's failure to conduct release detection monitoring on product piping for each UST was moderate in seriousness, since the violation had the potential to cause substantial harm to human health or the environment. N.J.A.C. 7:14-8.5(g)2i. Respondent's conduct was an unintentional but foreseeable act or omission, and thus moderate, because Respondent was the owner and operator of regulated USTs with a line detection system present, but failed to conduct the required tests and monitoring resulting in the violation. N.J.A.C. 7:14-8.5(h)2. Under the penalty matrix, the penalty range for a violation of moderate conduct and moderate seriousness is \$10,000 to \$20,000. N.J.A.C. 7:14-8.5(f). The Department considered Respondent's timely compliance with the field notice of violation and exercised its discretion to assess the penalty for the one violation included in the AONOCAPA at the minimum amount of the penalty range. N.J.A.C. 7:14-8.5(i).

For the reasons set forth therein and above, I ADOPT the ALJ's Initial Decision without modification, no exceptions having been filed, and the decision being reasonable and properly based upon the record. Respondent's request for a hearing to contest the AONOCAPA is dismissed with prejudice. Respondent is directed to pay the penalty of \$10,000 within thirty (30) days of this Final Decision, in accordance with paragraph 8 of the AONOCAPA.

IT IS SO ORDERED.

DATE: January 8, 2018



Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

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UST COMPLIANCE AND ENFORCEMENT, v.
MUNIR DAIBES D/B/A 858 ROUTE 202 ASSOCIATES

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