



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. ECE-US 05567-12

AGENCY DKT. NO. PEA060002-016459

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION—  
BUREAU OF HAZARDOUS WASTE AND  
UST COMPLIANCE AND ENFORCEMENT,**

Petitioner,

v.

**MUNIR DAIBES D/B/A 858 ROUTE 202,**  
Respondent.

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**Bernadette Hayes**, Deputy Attorney General, for petitioner (Christopher S. Porrino,  
Attorney General of New Jersey, attorney)

**Munir Daibes**, respondent, pro se

Record Closed: December 1, 2016

Decided: November 27, 2017

BEFORE **CARIDAD F. RIGO**, ALJ t/a:

## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, the New Jersey Department of Environmental Protection, Bureau of Hazardous Waste and Underground Storage Tank Program (hereinafter petitioner), issued an Administrative Order and Notice of Civil Administrative Penalty Assessment, dated November 20, 2006, against respondent Munir Daibes d/b/a 858 Route 202 Associates (hereinafter respondent) for violating the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1 et seq., and the Underground Storage of Hazardous Substances Act (USHSA), N.J.S.A. 58:10A-21 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:14B-1 et seq. Respondent was ordered to correct these violations by December 15, 2005.

Specifically, on November 20, 2006, petitioner issued a Field Notice of Violation to Route 202 Associates for violating the WPCA and the USHA for failing to conduct release-detection monitoring for product piping, failing to conduct testing on line-leak detectors, failing to properly register regulated tanks with the petitioner, having spill-containment buckets that contained product, and having an open electrical conduit.

On December 7, 2006, respondent requested an administrative hearing, and the matter was transmitted to the Office of Administrative Law (OAL) for disposition. The parties joined in settlement conferences on June 4, 2013, July 8, 2013, and July 23, 2013, but were unable to resolve the issues. Petitioner filed a motion for summary decision on September 12, 2013; a hearing was scheduled for October 11, 2013. Because petitioner was not represented by counsel, and because the hearing was only four weeks away, this administrative law judge postponed a decision on the motion for summary decision.

On October 11, 2013, petitioner appeared and was ready for a hearing, but respondent did not appear, nor did a representative, and respondent did not call this tribunal with a reason or an excuse for the non-appearance.

### **UNDISPUTED FACTS**

I **FIND** the following to be the undisputed **FACTS** of this case:

1. Route 202 is a commercial motor-fuel station located at 858 Route 202 (Main Street), Montville Township, Morris County, New Jersey (the site).
2. Petitioner issued a Certificate of Registration to Route 202 Associates, dated August 16, 2005, which identifies Munir Daibes as the owner and operator of the station.
3. At the time of the violations, Route 202 maintained three underground storage tanks (USTs) on-site, consisting of two 6,000-gallon unleaded USTs and one 6,000-gallon medium diesel fuel UST. Route 202 also maintains one above-ground waste oil tank. All the USTs have associated ancillary equipment at the site for dispensing gasoline for sale.
4. On December 7, 2005, a Department employee inspected the USTs located at the site with another UST inspector.
5. The inspectors discovered that Route 202 did not monitor its pressurized underground piping containing gasoline and it did not have an annual line-tightness test conducted or have a monthly monitoring test.
6. The inspection determined that Route 202 did not conduct monthly monitoring in accordance with N.J.A.C. 7:14B-6.6(a)(3), -6.2, and -6.3.
7. The inspection also determined that there was no documentation that indicated that Route 202 had tested the mechanical line-leak detectors annually, as required by N.J.A.C. 7:14B-6.6(a)(1).
8. It was also determined that Route 202 did not register each underground storage tank with the Department in violation of N.J.A.C. 7:14B-2.1(a).

9. Route 202 was required to inspect and clean all spill buckets and catchment basins every thirty days pursuant to N.J.A.C. 7:14-5.1(d). This regulation requires owners and/or operators to keep spill buckets and catchment basins free of product, water, and debris. The inspection revealed that there was product present in the spill buckets.

10. During the same inspection it was also observed that there was an open electrical conduit, which posed a safety hazard.

11. The December 7, 2005, notice of violation ordered Route 202 to take corrective actions and to resolve the violations within seven calendar days from December 7, 2005. Route 202 was also ordered to submit documentation of all actions taken to correct the violations within five calendar days of receipt of the notice.

12. Route 202 sent documentation on December 12, 2012, indicating that it had corrected the violations referenced in the December 7, 2005, request.

13. On November 20, 2006, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment to Route 202 for its failure to conduct release-detection monitoring for underground-product piping, as referenced in the December 7, 2005, notice. The Department assessed a penalty of \$10,000 for the violation.

14. The Department exercised its discretion and did not assess a penalty for the other three violations in the December 7, 2005, notice of violation.

### **LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

Summary decision, the administrative-law equivalent of summary judgment in the judicial branch, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute

and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which testimony needs to be taken. The standards for determining motions for summary judgment were defined in Judson v. People's Bank and Trust Company of Westfield, 17 N.J. 67, 74-75 (1954), and elaborated on by the Supreme Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there are no "genuine disputes" of "material fact." The determination as to whether disputes of material fact exist is made after a "discriminating search" of the record, consisting as it may of affidavits, certifications, documentary exhibits, and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of "genuine" disputes of material fact.

In accordance with N.J.S.A. 58:10A-1 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Department of Environmental Protection filed charges against Route 202 and submitted a motion for summary decision, accompanied with certifications and documents. Respondent was afforded numerous opportunities to present his arguments, and a hearing was scheduled where he could further contest those charges. Respondent failed to respond to the motion for summary decision and failed to appear for the hearing on October 11, 2013, without explanation or excuse, and has not communicated with this tribunal since July 8, 2013.

Therefore, given that respondent failed to contest the charges despite multiple opportunities to do so, and given the overriding documentation submitted by the Department, the violations against respondent must be sustained and I am compelled to grant petitioner's summary decision motion.

**ORDER**

It is hereby **ORDERED** that the Department's motion for summary decision is **GRANTED**, holding respondent liable for the violations alleged in the November 20, 2006, Administrative Order and Notice of Civil Administrative Penalty Assessment, specifically, N.J.A.C. 7:14B-6.2(a), failure to conduct release-detection monitoring for underground-product piping for underground storage tanks.

It is **FURTHER ORDERED** that respondent is liable for the \$10,000 civil administrative penalty assessed in the November 20, 2006, Administrative Penalty Assessment for the herein-stated violations.

I hereby **FILE** my Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Environmental Protection does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF LEGAL AFFAIRS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State Street, 4th Floor, West Wing, P.O. Box 402, Trenton, New Jersey 08625-0402**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 27, 2017

DATE



CARIDAD F. RIGO, ALJ t/a

Date Received at Agency:

November 27, 2017

Date Mailed to Parties:

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**APPENDIX**

**WITNESSES**

**EXHIBITS**

**For Petitioner:**

Notice of Motion for Summary Decision

Letter Brief in Support of Summary Decision

Certification of John M. Stavash

**For Respondent:**

None