

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael J. Ciccozzi, County Counsel, 134859 Breann M. Moebius, Deputy County Counsel, #254608 330 Fair Lane Placerville, CA 95667 TELEPHONE NO.: (530) 621-5770 FAX NO. (Optional): (530) 621-2937 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): EL DORADO COUNTY</p>	<p style="text-align: center;">FOR COURT USE ONLY</p> <p style="text-align: center;">EL DORADO CO. SUPERIOR CT.</p> <p style="text-align: center;">FILED MAY 23 2018</p> <p style="text-align: center;">BY <u>Sonal Dillon</u> Deputy</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF El Dorado STREET ADDRESS: 3321 Cameron Park Drive MAILING ADDRESS: 3321 Cameron Park Drive CITY AND ZIP CODE: Cameron Park, 95682 BRANCH NAME: Cameron Park</p>	
<p>PLAINTIFF/PETITIONER: EL DORADO COUNTY DEFENDANT/RESPONDENT: STEFKA DMITROVA</p>	
<p style="text-align: center;">NOTICE OF ENTRY OF JUDGMENT OR ORDER</p> <p>(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)</p> <p style="text-align: right;">CASE NUMBER: PC 20180261</p>	

TO ALL PARTIES:

1. A judgment, decree, or order was entered in this action on (date): 5/22/2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: May 22, 2018

BREANN M. MOEBIUS

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

▶ Bre Moebius
(SIGNATURE)

PLAINTIFF/PETITIONER: EL DORADO COUNTY	CASE NUMBER: PC 20180261
DEFENDANT/RESPONDENT: STEFKA DMITROVA	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):
330 FAIR LANE
PLACERVILLE, CA 95667

2. I served a copy of the Notice of Entry of Judgment or Order by enclosing it in a sealed envelope with postage fully prepaid and (check one):
a. deposited the sealed envelope with the United States Postal Service.
b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The Notice of Entry of Judgment or Order was mailed:
a. on (date): May 22, 2018
b. from (city and state): PLACERVILLE, CALIFORNIA

4. The envelope was addressed and mailed as follows:

a. Name of person served: STEFKA DMITROVA dba AMERICAN GAS	c. Name of person served:
Street address: 2762 LAKE TAHOE BLVD.	Street address:
City: SOUTH LAKE TAHOE	City:
State and zip code: CA 96150	State and zip code:
b. Name of person served:	d. Name of person served:
Street address:	Street address:
City:	City:
State and zip code:	State and zip code:

Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

5. Number of pages attached 21.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 22, 2018

Joy Henderson
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Michael J. Ciccozzi, County Counsel, 134859 Breann M. Moebius, Deputy County Counsel, #254608 330 Fair Lane Placerville, CA 95667 TELEPHONE NO.: (530) 621-5770 FAX NO. (Optional): (530) 621-2937 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): EL DORADO COUNTY SUPERIOR COURT OF CALIFORNIA, COUNTY OF El Dorado STREET ADDRESS: 495 Main Street MAILING ADDRESS: 495 Main Street CITY AND ZIP CODE: Placerville, CA 95667 BRANCH NAME: Placerville Main Street Branch PLAINTIFF: EL DORADO COUNTY DEFENDANT: STEFKA DMITROVA	FOR COURT USE ONLY EL DORADO CO. SUPERIOR CT. FILED MAY 22 2018 BY J. Dawes Deputy		
<table style="width:100%; border: none;"> <tr> <td style="text-align: center;">JUDGMENT</td> </tr> <tr> <td> <input checked="" type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial </td> </tr> </table>	JUDGMENT	<input checked="" type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER: PC 20180261
JUDGMENT			
<input checked="" type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial			

JUDGMENT

1. **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) Plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. **ON STIPULATION**
 - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. the signed written stipulation was filed in the case.
 - c. the stipulation was stated in open court the stipulation was stated on the record.

3. **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time) :
before (name of judicial officer) :
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each) : (1) (2) <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each) : (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input type="checkbox"/> Plaintiff's attorney (name each) : (1) (2) <input type="checkbox"/> Defendant's attorney (name each) : (1) (2)
--	--
 - c. Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

PLAINTIFF: EL DORADO COUNTY DEFENDANT: STEFKA DMITROVA	CASE NUMBER:
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JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

4. Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. for plaintiff (*name each*):
 EL DORADO COUNTY

c. for cross-complainant (*name each*):

and against defendant (*names*):
 STEFKA DMITROVA

and against cross-defendant (*name each*):

Continued on Attachment 5a.

Continued on Attachment 5c.

b. for defendant (*name each*):

d. for cross-defendant (*name each*):

6. Amount.

a. Defendant named in item 5a above must pay plaintiff on the complaint:

c. Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages		\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of		\$	
	%		
(3) <input type="checkbox"/> Attorney fees		\$	
(4) <input type="checkbox"/> Costs		\$	
(5) <input checked="" type="checkbox"/> Other (<i>specify</i>): PENALTY		\$	30,000
(6) TOTAL		\$	30,000

(1) <input type="checkbox"/> Damages		\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of		\$	
	%		
(3) <input type="checkbox"/> Attorney fees		\$	
(4) <input type="checkbox"/> Costs		\$	
(5) <input type="checkbox"/> Other (<i>specify</i>):		\$	
(6) TOTAL		\$	0

b. Plaintiff to receive nothing from defendant named in item 5b.
 Defendant named in item 5b to recover costs \$
 and attorney fees \$

d. Cross-complainant to receive nothing from cross-defendant named in item 5d.
 Cross-defendant named in item 5d to recover costs \$
 and attorney fees \$

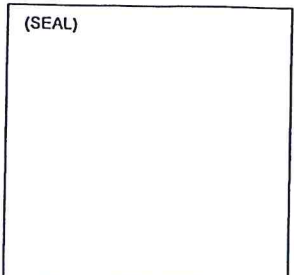
7. Other (*specify*): Judgment entered pursuant to Heath and Safety Code section 25404.1.3 in accordance with the attached February 13, 2018 Decision.

Date:

JUDICIAL OFFICER

Date: **MAY 22 2018**

Clerk, by **J. Dawes**, Deputy
Tania G. Ugrin-Capoblanco



CLERK'S CERTIFICATE (*Optional*)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy



OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

OAH Case No. 2017071137

El Dorado County

Petitioner

V.

Stefka Dmitrova

Respondent

OAH Clerk's Record

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BEFORE THE
COUNTY OF EL DORADO
STATE OF CALIFORNIA

In the Matter of:

EL DORADO COUNTY,

Petitioner,

v.

STEFKA DMITROVA,

Respondent.

Agency Case No. ML-04/2017-02

OAH No. 2017071137

PROPOSED DECISION

Joy Redmon, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 7, 2017, in Sacramento, California.

Breann Moebius, Deputy County Counsel, represented Complainant, Greg Stanton, Interim Director, El Dorado County Environmental Management Department (EMD), Certified Unified Program Agency (CUPA).

Stefka Dmitrova, respondent, appeared and represented herself in this matter. Daniel Bojckov, certified interpreter, provided English to Bulgarian and Bulgarian to English translation for respondent.

Evidence was received and the record remained open until January 8, 2018, for receipt of the parties' written closing briefs. EMD's closing brief is marked for identification as Exhibit "RR." Respondent's closing brief is marked for identification as Exhibit "4." Thereafter, the record was closed and the matter submitted on January 8, 2018.

FACTUAL FINDINGS

1. Complainant filed an Administrative Enforcement Order, dated June 12, 2017, in his official capacity on behalf of CUPA's Hazardous Materials Management Program. Respondent filed her Notice of Defense, and this hearing ensued.

2. CUPA is certified by the California Environmental Protection Agency (CalEPA) to implement specified environmental programs within its jurisdiction, including administering a compliance program for the underground storage of hazardous substances, pursuant to Health and Safety Code section 25404 et seq.

3. Respondent owns American Gas Inc., a gas station utilizing underground storage tanks for motor fuel sales. There are four fuel dispensers for three products (regular, premium, and diesel) and a small convenience store on the property. The gas station is located at 2762 Lake Tahoe Blvd., in South Lake Tahoe, which is located within El Dorado County. It is under EMD's jurisdiction. Respondent contracted with Mike Gerondakis, a technician she retained to maintain American Gas' underground storage tanks in a legally compliant manner.

4. The underground storage tanks and secondary containment systems (including annular spaces) at issue in this case are identified as 91 Premium Fill Sump; 91 Premium Submersible Turbine Pump (STP) Sump; 91 Premium Annular; 87 Regular Fill Sump; 87 Regular STP Sump; 87 Regular Annular; DSL Diesel Fill Sump; and DSL Diesel STP Sump. The underground storage tanks are used to store petroleum fuel and are thus covered by CUPA's compliance program.

March 30, 2017, Inspection

5. Matt Lewis, Hazardous Materials/Recycling Specialist with EMD conducted a scheduled annual inspection of American Gas on March 30, 2017. The purpose of the annual inspection, among other things, is to verify the leak detection mechanism is functioning properly. Mr. Lewis arrived shortly after 10:00 a.m. and both Mr. Gerondakis and respondent were present. As discussed below, the inspection resulted in 17 statutory and/or code violations.

6. Mr. Lewis observed the access lids for the underground storage tanks open and what appeared to be three leak detection sensors lying alongside the tanks. He surmised Mr. Gerondakis removed the sensors, which he should not have done prior to the inspection. Mr. Lewis went inside the store where the console and alarm for the leak detection system is located. No alarm was going off when Mr. Lewis entered. This concerned him, because given that three sensors were removed from the tanks, if the system were operating properly, the removal should have triggered the alarm. The console reported that the sensors were normal, which was incorrect.

7. Mr. Lewis inspected the alarm console, fill tanks, underground storage tanks, turbine and bucket associated with the tanks, and the annular space surrounding the tanks which is the secondary containment measure in the event that the main tanks leak. During the inspection he took photographs and noted the following concerns:

- 1) Liquid in the 91 Premium STP Sump when all sumps are required to be liquid and debris free to detect leaks at the earliest opportunity;

- 2) Liquid in the 87 Regular STP Sump with an active leak in the lower sump wall;
- 3) Liquid in the DSL Diesel STP Sump;
- 4) Alarm history log not located upon request, no alarm log was maintained which is required and must include the date an alarm was triggered, the sensor in alarm, and actions taken to clear the alarm. A similar violation was noted during the 2015 inspection;
- 5) Liquid measuring two inches in the 87 Fill Sump;
- 6) Liquid measuring two feet in the 91 Fill Sump;
- 7) Liquid measuring two feet in the DSL Diesel Fill Sump;
- 8) Liquid measuring two inches in the 87 annular space;
- 9) Liquid measuring four inches in the 91 annular space;
- 10) Bravo box float and chain monitoring system in DSL and 91 product floats not operational. The float system should be capable of shutting down the product flow to the dispenser or activating an alarm when a leak is detected. The service technician adjusted the float chains. The floats were retested and properly tripped the shear valves. This violation was noted during the 2010, 2011, 2013, and 2016 inspections;
- 11) Annual monitoring certification test not timely completed. A monitoring certification test is required to be conducted annually by a qualified technician and the certification submitted to El Dorado County EMD within 30 days of the test's completion. The last certification was conducted on February 27, 2016, more than 12 months prior to Mr. Lewis's inspection;
- 12) Liquid sensor in the 87 Regular STP Sump not located in proper position. The Sensor was positioned at an angle. When properly placed vertically at the lowest point of containment it will detect a leak at the earliest opportunity. When the sensor was moved to the correct position, prior to removing the liquid, the system went into alarm and properly shut down the turbine. After testing was completed and the liquid removed the technician properly placed the sensor;
- 13) Liquid sensor in the DSL Diesel STP Sump not in the proper position as it was angled. Same observation and outcome as discussed in 12 above;

- 14) Liquid sensor in the 91 Premium STP Sump not in the proper position as it was angled. Same observation and outcome as discussed in 12 above;
- 15) Sensor in the 87 Regular annular space was measured at approximately 12 feet; however, the annular space was 13 feet to the bottom from the top of the riser. Therefore, the sensor could not detect a leak at the earliest possible opportunity. The sensor length was adjusted and placed into the correct position which then properly triggered an alarm due to liquid in the annular space as described in number eight above;
- 16) Sensor in the 91 Premium annular space was measured at approximately five feet and seven inches and the annular space was 13 feet deep. Therefore, the sensor could not detect a leak at the earliest possible opportunity. The sensor length was adjusted and placed into the correct position which then properly triggered an alarm due to the liquid in the annular space as described in number nine above; and
- 17) The facility had an inactive CalEPA identification number. Anyone who generates, transports, offers for transport, treats, stores, or disposes hazardous waste must maintain an active identification number. This same violation was noted during the 2016 inspection and was not yet corrected.

8. Following the inspection, Mr. Lewis prepared an Inspection Report/Notice to Comply. It included the specific correction action respondent either had taken during the inspection or was required to take following the inspection and the date by which the action was to be taken. Mr. Lewis emailed the report to respondent on March 31, 2017. The CUPA retained the right to pursue administrative, civil, and criminal action against respondent.

9. Mr. Lewis noted at hearing that the CUPA has a vital role in protecting the health and welfare of the citizens and the environment. That is achieved through routine inspections, oversight, and consistent enforcement. The CUPA works with station owners to help achieve CUPA's goals, but ultimately the station owners are responsible for maintaining a legally compliant facility.

10. Mr. Lewis testified that respondent told him during the inspection that she moved the sensors so the alarm would stop going off because she feared customers would not come into the store with the alarm sounding. Respondent denies having made the comment and asserts that she does not personally maintain the underground tanks and would not have moved the sensors. Mr. Lewis concluded that the leak detection sensors were moved specifically to avoid triggering the alarm because, as discussed above, significant liquid had intruded the sumps and annular spaces and the alarm was not triggered until the sensors were correctly placed. Placing a sensor sideways or shortening the sensor's length to avoid activating the alarm eliminates the protective purpose of leak detection. Mr. Lewis

surmised how long before the inspection the sensors had been moved by documenting the last date the alarm console reported an active alarm for each sensor. Using that method, Mr. Lewis calculated the following:

- 91 Premium STP Sump = seven days
- 87 Regular STP Sump = three days
- DSL Diesel STP Sump = 37 days
- 87 Regular Annular space = 256 days
- 91 Premium Annular space = one day
- 91 Premium Fill Sump = 27 days
- DSL Diesel Fill Sump = one day

Prior Violations and Enforcement Actions

11. In July 2006, respondent was cited for six violations, including the failure to maintain sensors in the lowest point in three fill sumps. In February 2009, she was cited for seven violations, including failing to correctly place the float chains. In December 2010, respondent received four violations, including the failure to keep containments clean and debris free. In December 2011, respondent received four violations, also for failing to keep the underground storage tanks clean, dry, and debris free. In February and March 2014, respondent received a combined 10 violations, including having raised sensors and sumps that were not clean, dry, and debris free. In February 2015, respondent was cited for five violations, including for having sensors not placed in the lowest position to detect a leak at the earliest opportunity. In February 2016, respondent received eight violations, including not having an operational bravo box float and chain system. In July 2016, three sumps failed secondary containment testing.

12. On February 18, 2015, Mark Moss, Hazardous Materials/Recycling Specialist, notified respondent that because she had not been responsive to prior corrective action, an Office Hearing was scheduled to attempt to reach an agreement to ensure the violations were abated and compliance maintained. On March 25, 2015, the CUPA and respondent reached an agreement wherein she agreed to, "ensure that all sensors are properly placed within their respective sumps and keep all sumps clean, dry and free of debris."

13. In April 2016, following an inspection through which it was determined respondent was not in compliance with the March 25, 2015 agreement, CUPA filed an Administrative Enforcement Order noting, among other things, respondent was responsible for a maximum penalty of \$68,724. The parties reached an agreement whereby respondent paid a discounted penalty of \$6,872 and \$1,606 in departmental costs. The terms of settlement agreements are not typically disclosed or considered in administrative hearings; however, each side testified about the settlement agreement and amount, thereby waiving any associated privilege.

Current Enforcement Order Violations

14. On June 13, 2017, Mr. Lewis sent respondent the Administrative Enforcement Order at issue in this matter. The Enforcement Order cited respondent for three violations based upon the March 30, 2017 inspection. The violations contained in the Order are: 1) failing to properly position leak detection equipment capable of detecting a leak at the earliest opportunity in the regular, premium, and diesel STP sumps, and the regular and premium annular sensors in violation of California Code of Regulations, title 23, section 2630, subdivision (d);¹ 2) failing to operate a system capable of detecting the entry of hazardous substances from the inner container into the secondary space. The regular, premium, and diesel STP sumps and fill sumps, were observed with liquid and the regular and premium underground storage tanks' annual spaces also had liquid at the bottom in violation of Health and Safety Code section 25291, subdivision (a)(6)(B);² and 3) failing to maintain under-dispenser spill control or containment systems with a continuous monitoring system that either activates an audible and visual alarm or stops the flow of product at the dispenser when it detects a leak. The premium and diesel product bravo box float and chain assembly were not operational during inspection in violation of California Code of Regulations, title 23, section 2636, subdivision (f)(1).³

15. Respondent does not substantively dispute the above violations. Rather, she asserts that CUPA did not prove the violations because the photographs entered into evidence were not dated and timestamped. That argument is not persuasive because Mr. Lewis credibly established the authenticity of the photographs upon their introduction at hearing. Respondent also argues that the liquid and debris found in the tanks had only entered that day due to inclement weather because her technician, Mr. Gerondakis removed the lids that morning before the inspection. The evidence, including the weather reports for that morning submitted in this matter, do not establish that between two inches and two feet

¹ Code of Regulations, title 23, section 2630, subdivision (d) states, in part, “[a]ll monitoring equipment used to satisfy the requirements of this article shall meet the requirements of section 2643(f) and shall be installed and maintained such that the equipment is capable of detecting leak at the earliest possible opportunity.”

² Health and Safety Code section 25291, subdivision (a)(6)(B) requires that every underground storage tank installed after January 1, 1984, must be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored therein and be, “capable of detecting the entry of hazardous substances from the inner container into the space.”

³ Code of Regulations, title 23, section 2636, subdivision (f)(1) states that, “[a]ll secondary containment, including under-dispenser containment, and under-dispenser spill control or containment systems shall be equipped with a continuous monitoring system that either activates an audible and visual alarm or stops the flow of product at the dispenser when it detects a leak.

of liquid could have entered the various tanks during the time they were open before Mr. Lewis began his inspection shortly after 10 a.m.

16. Complainant established by a preponderance of the evidence that respondent violated California Code of Regulations, title 23, section 2630, subdivision (d), by not having properly positioned leak detectors in three STP sumps, and raised sensors in two annular spaces.

17. Complainant established by a preponderance of the evidence that respondent violated Health and Safety Code section 25291, subdivision (a)(6)(B), by having liquid in three STP sumps, three fill sumps, and the annular space in two underground storage tanks.

18. Complainant established by a preponderance of the evidence that respondent violated California Code of Regulations, title 23, section 2636, subdivision (f)(1), by not having an operational bravo box float and chain assembly as the diesel and premium product floats were not operational during the inspection.

19. Complaint did not establish by a preponderance of the evidence the length of each violation. Mr. Lewis calculated how long each violation occurred by starting the day the last alarm reported by the alarm console. That establishes the longest possible time the violation may have occurred; however, it does not establish that each violation actually persisted since that time. Complainant only established by a preponderance of the evidence that the violations were present on the day of the inspection, anything beyond that is conjecture.

Calculation of the Penalty and Costs Assessment

20. Barbara Houghton, Environmental Management Program Manager, did the penalty calculation. She explained the statutory maximum for penalties are set forth in statute,⁴ but she uses a "matrix" CUPA was provided by "the state," for the specific calculation. Ms. Houghton explained the penalty calculation involves using "guidelines" published by CalEPA. Houghton contended the matrix and guidelines utilized in the penalty calculation are based on state law and regulation, apparently for the purpose of ensuring consistent enforcement response actions. The matrix and guidelines were submitted in evidence but it was not established they have been adopted through regulation or otherwise formally prepared in accordance with Health and Safety Code section 25299.7, subdivision (b).⁵

⁴ Health and Safety Code section 25299, subdivision (b)(5) states, in part, that an owner of an underground tank system is liable for civil penalty of not less than \$500 and not more than \$5,000 per day for each underground storage tank, for each day of violation.

⁵ This section allows the State Water Resources Control Board to prepare procedures and implementation plans necessary to assure compliance with the requirements for a state program implementing the federal act regulating underground storage tanks, Subchapter IX

21. Ms. Houghton explained that each violation was assigned a risk factor for seriousness, with the guidelines assisting in the classification. Each violation was first determined to have a "major," "moderate," or "minor" impact based on the actual or potential harm based on the risk to the environment or public health. Then the extent of the deviation was classified as "minor" (i.e., the owner/operator was not aware of the violation and did not create it intentionally), "major" (i.e., ignoring the existence of a known violation), or "moderate" (i.e., something in between "minor" and "major"). The number of times the violation occurred was also noted, along with the statutory maximum amount for the violation, the initial penalty amount, and adjustments to the penalty for other factors such as intent, the economic benefit received by failing to comply, multiple day violations, and the level of cooperation and compliance. Ms. Houghton stated that although the statutory maximum for each violation could have been \$5,000 per underground storage tank, per day, the penalties were not assessed on a per tank, per day basis, because they would have become unreasonable.

22. Ms. Houghton applied what she considered a conservative approach in calculating the penalty amount. She started with the statutory maximum of \$5,000 per violation for a single day. For the violations, there were five raised sensors and eight sumps or annular spaces containing liquid. She concluded that imposing a penalty for 13 violations was too substantial, so she assessed a penalty for only three sumps and three raised sensors.

23. The extent of the harm was "major," because the liquid in the sumps showed they were not water tight and could not contain petroleum if a leak occurred. The raised sensors were considered "major," because a leak could not be detected at the earliest opportunity, thereby presenting risk to the environment, in this case specifically, Lake Tahoe. Additionally, Ms. Houghton explained that considering these "major" violations was also justified because respondent was a "recalcitrant violator," based on her prior poor compliance history and nearly identical prior violations. Accordingly, the base penalty for each of the six violations was set at \$5,000, for a total of \$30,000.

24. Next, Ms. Houghton determined the penalty should be adjusted upward based upon the guidelines, for each day the violation persisted. As noted above, the days of violation were calculated based on the last day the alarm sounded for each tank. That was a total aggregate of 114 days (consisting of seven days, three days, and 37 days for the leak detection failures, and 27 days, three days, and 37 days for the liquid in the sumps or secondary containment). The matrix recommends adjusting the penalty upward by two percent per day for each day of violation. She calculated the final penalty for the three leak detection violations at \$5,600, \$5,200, and \$5,600; and for the liquid violations at \$7,600, \$5,200, and \$8,600. The total penalty sought was \$40,800.

(commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), without complying with the Administrative Procedure Act, regarding promulgations of regulations.

Respondent's Contentions

25. Respondent asserted that others, including the designated underground storage operator and the Construction, Maintenance & Testing for Fueling Facilities & Lubricating Systems, had access to the fill sumps. She asserts that if one of them tampered with the sensors she is unaware and should not be responsible. This argument is unpersuasive. There was no evidence that one of these people tampered with the sensors. Moreover, respondent hired these contractors and, as the facility owner, remains legally responsible for operating it in a legally compliant manner.

26. Respondent asserted in her closing brief that Mr. Gerondakis was working on the underground storage tanks prior to Ms. Lewis's arrival and that he, "was not observing the true location of the sump sensors." This argument was raised for the first time in respondent's closing brief. Even had it been asserted at hearing, the argument was unpersuasive. Mr. Lewis established that the inspection was scheduled and Mr. Gerondakis should not have removed any sensors prior to inspection. Regardless, the removed sensors were later measured and determined to be too short to reach the bottom of the tanks. Further, had the remaining sensors that were placed at an angle been placed correctly the alarm would have been triggered when Mr. Lewis initially inspected the alarm console. As soon as they were placed upright, the alarm triggered due to the liquid in the pumps.

27. Respondent asserted that she was diligent at all times in communicating with CUPA representatives and that Mr. Lewis and others repeatedly ignored her inquiries. The emails presented at hearing belie respondent's assertions. The emails establish that each CUPA representative who interacted with respondent timely responded to her inquiries. Moreover, respondent was required to be aware of her responsibilities under the underground storage tank laws and regulations.

28. Respondent also asserted in her closing brief that on the day of the inspection, when Mr. Gerondakis, "reassembled the floating system, they inadvertently dropped floats in the tank causing the T3 Diesel Probe Alarm not to function." She further asserted it took one month to repair the problem and it caused false alarms to go off due to false reads. Respondent made no such assertion at hearing and there was no evidence presented to substantiate this contention.

29. Respondent suggested no penalty should be assessed because she has replaced the underground storage tanks and is now in compliance with the laws and regulations. Respondent conceded that she did not pay for the upgrades as they were funded by a grant. More importantly, the argument ignores the deterrent effect of a penalty and does not account for the extended cost and effort required to obtain compliance.

///

LEGAL CONCLUSIONS

Respondent's Violations

1. Respondent is required to manage American Gas's underground storage tanks in accordance with the requirements of Chapter 6.7 of Division 20 of the Health and Safety Code, commencing at section 25280, which governs the underground storage of hazardous substances. The "intent of the tank laws is 'to establish orderly procedures that will ensure . . . existing tanks be properly maintained, inspected, tested, and upgraded so that the health, property, and resources of the people of the state will be protected.'" (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840-841, citing Code § 25280, subd. (a)(5)(b).) Respondent is also required to abide by other provisions in the Code pertaining to the handling of hazardous substances. CUPA is authorized to issue administrative enforcement orders in the event of noncompliance under the unified enforcement program pertaining to hazardous substances pursuant to Code section 25404 et seq.

2. As set forth in Finding 16, complainant established by a preponderance of the evidence that respondent violated Code of Regulations, title 23, section 2630, subdivision (d) by not having properly positioned leak detectors in three STP sumps, and raised sensors in two annular spaces. Cause exists to uphold this violation.

3. As set forth in Finding 17, complainant established by a preponderance of the evidence that respondent violated Health and Safety Code section 25291, subdivision (a)(6)(B), by having liquid in three STP sumps, three fill sumps, and the annular space in two underground storage tanks. Cause exists to uphold this violation.

4. As set forth in Finding 18, complainant established by a preponderance of the evidence that respondent violated California Code of Regulations, title 23, section 2636, subdivision (f)(1), by not having operational bravo box float and chain assembly as the diesel and premium product floats were not operational during the inspection. Cause exists to uphold this violation.

The Amount of the Civil Penalties

5. Code section 25404.1.1, subdivision (a)(2), provides that:

If the [enforcement] order is for a violation of Chapter 6.7 (commencing with Section 25280 [the UST enforcement program]), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

///

6. Code section 25404.1.1, subdivision (a)(3), provides that:

If the [enforcement] order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

7. Code section 25404.1.1, subdivision (b), directs CUPA, in establishing the amount of the penalty, to take into consideration:

the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

8. Code section 25299⁶, subdivision (g), provides that in determining the civil penalties imposed pursuant to section 25299, "all relevant circumstances" shall be considered,

the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

9. Code section 25299, subdivision (h)(1), makes clear that "[e]ach civil penalty . . . imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty . . . imposed pursuant to this section or any other provision of law. . . ." The violations can be asserted separately, with penalties reaching a maximum of \$5,000 for each violation, for each underground storage tank, for each day-- even if the violations could be construed as being based, in part, on the same operative facts. (See *People v. Roscoe, supra*, 169 Cal.App.4th 829, upholding penalties associated with multiple violations based on the delays in remediating a leak of gasoline from an underground storage tank.) Instead of seeking the maximum amount, which would have been enormous, CUPA conservatively phrased the documentary violations in the Enforcement Order so that the base administrative penalty was assessed at \$30,000.

10. Ms. Houghton determined that the \$30,000 penalty should be further adjusted upward for each day the violations persisted based on the CalEPA guidelines and related

⁶ This section was amended and implemented on January 1, 2018. The section cited herein is the version in effect at the time respondent sustained the violation.

matrix.⁷ However, as discussed in Finding 19, the violation days beyond the inspection day were not established by a preponderance of the evidence. Accordingly, no increase based on the number of days would be approved, even were the matrix or guidelines to be applied in this case.

11. Based on all of the facts and the factors to be considered by CUPA in setting the final penalty amount, a total penalty of \$30,000 for the violations is consistent with the law and the Findings contained in this decision. The Enforcement Order shall be upheld with respect to this amount.

ORDER

1. By reason of the foregoing Factual Findings and Legal Conclusions, the penalty assessed in the Enforcement Order is modified as follows: Respondent Stefka Dmitrova shall pay a penalty in the total amount of \$30,000.

2. Except as set forth in this Order, Respondent's appeal of the Enforcement Order is DENIED. The Enforcement Order, as modified by this Order, is affirmed.

3. Respondent shall pay the penalty amount at such time and in such manner as CUPA may direct.

DATED: February 5, 2018

DocuSigned by:

Joy Redmon

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JOY REDMON

Administrative Law Judge

Office of Administrative Hearings

⁷ The matrix and guidelines appear to be aimed at ensuring consistency across programs within the state. However, there was no evidence the matrix or guidelines were consistent with regulations properly adopted, which raises the question of whether they are able to be applied. That question does not need to be addressed here.

2/13/2018 2:03 PM
RECEIVED BY OAH

BEFORE THE
COUNTY OF EL DORADO
STATE OF CALIFORNIA

In the Matter of:

EL DORADO COUNTY,

Petitioner,

v.

STEFKA DMITROVA,

Respondent.

Agency Case No. ML-04/2017-02

OAH No. 2017071137

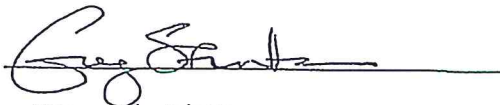
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Environmental Protection Agency CUPA as its Decision in the above-entitled matter.

This Decision shall become effective on 2/13/2018.

IT IS SO ORDERED this 13TH day of FEBRUARY 2018.

By:



Greg Stanton
Director, Environmental
Management Department

1 MICHAEL J. CICCOCZZI (SBN 134859)
2 County Counsel
3 BREANN M. MOEBIUS (SBN 254608)
4 Deputy County Counsel
5 El Dorado County
6 330 Fair Lane
7 Placerville, CA 95667
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10
11 Attorney for Petitioner El Dorado County

12 BEFORE THE
13 EL DORADO COUNTY
14 ENVIRONMENTAL MANAGEMENT DEPARTMENT
15 HAZARDOUS MATERIALS MANAGEMENT
16 CERTIFIED UNIFIED PROGRAM AGENCY

17 EL DORADO COUNTY,

18 Petitioner,

19 v.

20 STEFKA DMITROVA,

21 Respondent.

Agency Case No. ML-04/2017-02

OAH No. 2017071137

PROOF OF SERVICE BY MAIL

22 I am a citizen of the United States and a resident of the County of El Dorado. I am over
23 the age of eighteen (18) years and not a party to the within action; my business address is 330
24 Fair Lane, Placerville, California.

25 On February 13, 2018, I served the following:

26 FINAL DECISION

27 to the party(ies) below, by placing a true copy thereof enclosed in a sealed envelope at
28 Placerville, California, addressed as follows:

-1-


PROOF OF SERVICE
EL DORADO COUNTY v. STEFKA DMITROVA

1 Stefka Dmitrova
2 DBA American Gas
3 2762 Lake Tahoe Blvd.
4 South Lake Tahoe, CA 96150
5 Email: sdkimports@yahoo.com

6 X By U. S. Mail/Certified Mail (Article Number: 7017 3040 0000 4306 2759): I
7 placed each such envelope(s) for collection and mailing via First Class Mail,
8 following ordinary business practices. I am readily familiar with El Dorado
9 County's practice of collection and processing correspondence for mailing.
10 Under that practice it would be deposited with U. S. Postal service on that same
11 day with postage thereon fully prepaid at Placerville, California, in the ordinary
12 course of business. I am aware that on motion of the party served, service is
13 presumed invalid if postal cancellation date or postage meter date is more than
14 one day after the date of deposit for mailing an affidavit.

15 X (By Electronic Mail) I caused such document(s) to be transmitted by Electronic Mail to the
16 Email address indicated after the address(es) noted above.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th
18 day of February, 2018, at Placerville, California.

19 
20 Joy Henderson

**CERTIFICATION OF THE
OFFICE OF ADMINISTRATIVE HEARINGS
CLERK'S RECORD**

I hereby certify that the documents, consisting of pages numbered 1 to 146, are to the best of my knowledge, a full, true, and correct copy of the Office of Administrative Hearings Clerk's Record retained by OAH in Case No. 2017071137, entitled El Dorado County v. Dimitrova.

Exhibits and other materials that were returned to the El Dorado County are not included in this record.

Dated: May 17, 2018, at Sacramento, California.



Anthony Corella
Administrative Record Coordinator

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):

After recording, return to:

Michael J. Ciccozzi, County Counsel, #134859
Breann M. Moebius, Deputy County Counsel, #254608
330 Fair Lane
Placerville, CA 95667

TEL NO.: (530) 621-5770 FAX NO. (optional): (530) 621-2937

E-MAIL ADDRESS (Optional):

ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF El Dorado

STREET ADDRESS: 3321 Cameron Park Drive

MAILING ADDRESS: 3321 Cameron Park Drive

CITY AND ZIP CODE: Cameron Park, CA 95682

BRANCH NAME: Cameron Park

FOR RECORDER'S USE ONLY

PLAINTIFF: EL DORADO COUNTY

DEFENDANT: STEFKA DMITROVA

CASE NUMBER:

PC 20180261

**ABSTRACT OF JUDGMENT - CIVIL
AND SMALL CLAIMS**

Amended

FOR COURT USE ONLY

1. The judgment creditor assignee of record applies for an abstract of judgment and represents the following:

a. Judgment debtor's

Name and last known address

STEFKA DMITROVA dba AMERICAN GAS
2762 LAKE TAHOE BLVD.
SOUTH LAKE TAHOE, CA 96150

b. Driver's license no. [last 4 digits] and state:

Unknown

c. Social security no. [last 4 digits]:

Unknown

d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):

2. Information on additional judgment debtors is shown on page 2.

4. Information on additional judgment creditors is shown on page 2.

3. Judgment creditor (name and address):
EL DORADO COUNTY
330 FAIR LANE
PLACERVILLE, CA 95667

5. Original abstract recorded in this county:

a. Date:

b. Instrument No.:

Date: 5/23/18

BREANN M. MOEBIUS

(TYPE OR PRINT NAME)

Be Moeb

(SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed:
\$ 30,000

10. An execution lien attachment lien is endorsed on the judgment as follows:

7. All judgment creditors and debtors are listed on this abstract.

a. Amount: \$

b. In favor of (name and address):

8. a. Judgment entered on (date): 5/22/2018

b. Renewal entered on (date):

9. This judgment is an installment judgment.

11. A stay of enforcement has

a. not been ordered by the court.

b. been ordered by the court effective until (date):

12. a. I certify that this is a true and correct abstract of the judgment entered in this action.

b. A certified copy of the judgment is attached.

[SEAL]



This abstract issued on (date):

MAY 23 2018

Tania G. Ugrin-Capobianco
Clerk, by

Sonal Dillon, Deputy

PLAINTIFF: EL DORADO COUNTY

COURT CASE NO:

PC 20180261

DEFENDANT: STEFKA DMITROVA

NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:

13. Judgment creditor (*name and address*):

14. Judgment creditor (*name and address*):

15. Continued on Attachment 15.

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:

16. Name and last known address

17. Name and last known address

┌ _____ └ _____

┌ _____ └ _____

┌ _____ └ _____

┌ _____ └ _____

Driver's license no. [last 4 digits] and state:

Driver's license no. [last 4 digits] and state:

Unknown

Unknown

Social security no. [last 4 digits]:

Unknown

Social security no. [last 4 digits]:

Unknown

Summons was personally served at or mailed to (*address*):

Summons was personally served at or mailed to (*address*):

18. Name and last known address

19. Name and last known address

┌ _____ └ _____

┌ _____ └ _____

┌ _____ └ _____

┌ _____ └ _____

Driver's license no. [last 4 digits] and state:

Driver's license no. [last 4 digits] and state:

Unknown

Unknown

Social security no. [last 4 digits]:

Unknown

Social security no. [last 4 digits]:

Unknown

Summons was personally served at or mailed to (*address*):

Summons was personally served at or mailed to (*address*):

20. Continued on Attachment 20.