

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

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

ORDER

DEC Case No.
2-253790

- by -

E & C MGMT. ,

Respondent.

Pursuant to 6 NYCRR 622.3, staff of the New York State Department of Environmental Conservation ("Department") commenced an administrative enforcement proceeding against respondent E & C Mgmt. by certified mail service of a notice of hearing and complaint dated May 4, 2004. Respondent received the notice of hearing and complaint on May 12, 2004.

The complaint alleged that:

A. respondent is the owner of a petroleum bulk storage facility ("facility") located at 13-15 West 100 Street, New York, New York; and

B. respondent failed to timely register its facility as required by ECL 17-1009 and 6 NYCRR 612.2.

Respondent failed to answer or move with respect to the complaint or otherwise appear in this proceeding. Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint expired on June 1, 2004, and such time has not been extended.

On July 7, 2004, Department staff filed a motion for a default judgment with the Department's Office of Hearings and Mediation Services. Department staff supplemented its motion with an October 7, 2004 affidavit by Alyce M. Gilbert, Esq., indicating that respondent's petroleum bulk storage facility registration expired on July 14, 2002, that respondent registered the facility late on January 29, 2004, and that the facility remained unregistered for a period of one year and six months.

The matter was assigned to Administrative Law Judge ("ALJ") Kevin J. Casutto, who prepared the attached default summary report. The ALJ's report is adopted as my decision in this matter, subject to the comments herein.

Respondent failed to renew the registration of its petroleum bulk storage facility from July 14, 2002 to January 29, 2004. During the period from July 14, 2002 to May 14, 2003, ECL 71-1929 provided that any person who violated any provision or failed to perform any duty imposed by ECL article 17 or any rule, regulation or order issued thereunder, or committed any offense described in ECL article 17 was liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for each violation. Effective May 15, 2003, the penalty was increased and ECL 71-1929 currently provides for a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. Based upon the record before me, the civil penalty of seven thousand five hundred dollars (\$7,500) sought by Department staff is justified and warranted by the circumstances of this case.

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

I. Staff's motion for a default judgment against respondent E & C Mgmt. is granted.

II. Pursuant to 6 NYCRR 622.15, respondent is adjudged to be in default and to have waived its right to a hearing in this proceeding. Accordingly, respondent is deemed to have admitted the factual allegations in the complaint.

III. Respondent is determined to have violated ECL 17-1009 and 6 NYCRR 612.2 by failing to timely renew its registration for its petroleum bulk storage facility from July 14, 2002 to January 29, 2004.

IV. Respondent is assessed a civil penalty in the amount of seven thousand five hundred dollars (\$7,500), which is due and payable no later than 30 days after service of this order upon respondent. Such payment shall be made in the form of a certified check, cashier's check or money order payable to the order of the "New York State Department of Environmental Conservation" and delivered to the Department at the following address: New York State Department of Environmental Conservation, Legal Affairs, 14th floor, Attn: Benjamin A. Conlon, Esq., 625 Broadway, Albany, New York 12233-5500.

V. All communications from respondent to Department Staff concerning this order shall be made to Associate Attorney Benjamin A. Conlon, Esq., New York State Department of Environmental Conservation, 625 Broadway, 14th floor, Albany, New York 12233-5500.

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

For the New York State Department
of Environmental Conservation

/s/
By: Denise M. Sheehan
Acting Commissioner

Dated: Albany, New York
May 31, 2005

To: E & C Mgmt. (via certified mail)
349 West 45th Street, #BE
New York, New York 10036

Benjamin A. Conlon, Esq. (via regular mail)
Associate Attorney
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X-----X

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

**DEFAULT
SUMMARY
REPORT**

DEC Case No.
2-253790

E & C MGMT,

(11/4/2004)

Respondent.

X-----X

Proceedings

By notice of motion dated July 7, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against respondent concerning alleged violations of Article 17 of the Environmental Conservation Law ("ECL"). It is alleged by DEC that respondent violated Article 17 of the ECL by failing to register its petroleum bulk storage facility at 13-15 West 100 Street, New York, New York. In support of its motion, DEC submitted an affirmation of Associate Attorney Benjamin A. Conlon (dated July 7, 2004), an affidavit of DEC employee Alyce M. Gilbert, Esq. (dated October 7, 2004), a proposed order and proof of service of the notice of hearing and complaint on the respondent, by certified mail, return receipt, which was received by the respondent on May 12, 2004.

As of the date of the motion, respondent has failed to appear and serve an answer or otherwise move, although the time to do so expired on June 1, 2004. Further, DEC Staff submitted proof that said notice of hearing and complaint directed respondent to appear for a pre-hearing conference on May 20, 2004. The affirmation of attorney Conlon indicates that respondent failed to appear at said conference.

DEFAULT PROCEDURES:

Section 622.15 of 6 NYCRR, "Default Procedures," provides, in pertinent part: "(b) The motion for a default judgment ... must contain: (1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear or failure to file a timely answer; and (3) a proposed order."

The following findings are based upon the papers submitted, as identified above.

FINDINGS

1. Staff served a notice of hearing and complaint on respondent E & C MGMT, which was received by respondent on May 12, 2004. The time to answer or otherwise move expired on June 1, 2004. The respondent has served no answer or motion to date.
2. Respondent has failed to comply with the registration requirements set forth in 6 NYCRR part 612 for its petroleum bulk storage facility located at 13-15 West 100 Street, New York, New York.
3. Respondent's petroleum bulk storage facility registration expired on July 14, 2002. Respondent registered the facility on January 29, 2004. The facility remained unregistered for a period of one year and six months.
4. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR 622.15(b).

CONCLUSION

The motion for default judgment should be granted.

DATED: November 4, 2004
Albany, New York

Kevin J. Casutto
Administrative Law Judge

To: Benjamin A. Conlon, Esq.
Associate Attorney
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, N.Y. 12233-5500

E & C MGMT
349 West 45th Street, #BE
New York, New York 10036