

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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”) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”),

**RULING OF THE  
ACTING COMMISSIONER**

DEC CASE NO.  
2-609074YW

-by-

**EV 1<sup>ST</sup> AVENUE PROPERTY OWNER, L.P.,**

Respondent.

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By order dated September 29, 2014 (Order), Commissioner Joseph J. Martens assessed a civil penalty in the amount of five thousand dollars (\$5,000) upon respondent EV 1<sup>st</sup> Avenue Property Owner, L.P. (respondent). The penalty was assessed on respondent for violating 6 NYCRR 612.2 because of its failure to reregister a petroleum storage facility located at 101 Third Avenue, New York, New York (facility), within 30 days after it became the owner of the facility. The Commissioner also directed that respondent submit to the Department a petroleum bulk storage registration application for the facility.

On April 22, 2016, staff of the New York State Department of Environmental Conservation (Department) moved to vacate the Order on the ground that Department staff had newly discovered information demonstrating that respondent never owned the facility. According to staff’s letter-motion, following issuance of the Order and referral to the Attorney General’s office for enforcement of the Order, the true owner of the facility contacted the Attorney General’s office and advised that the deed reflecting respondent’s ownership of the property was in error (see Letter-Motion, at 1-2).<sup>1</sup> Following issuance of the Order, the incorrect deed was removed from the chain of title. Department staff has submitted with its motion to vacate copies of the incorrect, and correct, deeds (see Letter-Motion, Exhibits A and B), and states that staff will coordinate with the true owner of the property and the Attorney General’s office to secure proper registration of the facility.

Based on the record before me, granting Department staff’s motion to vacate the Order is warranted.

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<sup>1</sup> Respondent was not copied on the April 22, 2016 letter-motion, and an updated letter-motion was served on respondent and filed with the Department on April 25, 2016.

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

- I. Department staff's motion to vacate the order dated September 29, 2014 in the Matter of EV 1<sup>st</sup> Avenue Property Owner, L.P. is granted, and the order is hereby vacated.
- II. I direct that the Office of Hearings and Mediation Services add a notation, at the beginning of the copy of the September 29, 2014 order in the Matter of EV 1<sup>st</sup> Avenue Property Owner, L.P. that is posted in pdf and html format on the Department's website, stating that the order has been vacated.

For the New York State Department  
of Environmental Conservation

/s/

By: \_\_\_\_\_

Basil Seggos  
Acting Commissioner

Dated: May 18, 2016  
Albany, New York