

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

RULING

DEC Case No.
2-204609

Christopher Persheff, Light Street, LLC

Respondent

Procedural Background

By notice of motion dated July 2, 2004, staff of the Department of Environmental Conservation (“DEC” or “Department”) sought a judgment by default against respondents Christopher Persheff (“Persheff.”) and Light Street (“Light”) concerning alleged violations of the Article 17 of the Environmental Conservation Law (“ECL”). DEC Staff identifies the named respondents as one respondent in the default motion and supporting affirmation with no further explanation. It is alleged by DEC that Persheff and Light violated Article 17 of the ECL by failing to register a petroleum bulk storage facility at 26 Bruckner Blvd, Bronx, N.Y. In support of its motion, DEC submitted an affirmation of Associate Attorney Benjamin A. Conlon, a proposed order and a certified mail return receipt regarding service of a notice of hearing complaint that names respondent Persheff only as a respondent. The certified mail return receipt is addressed to both Persheff and Light, at the same address, but was not signed by Persheff.

As of the date of the motion, respondent Persheff has not appeared and served an answer or otherwise moved. DEC Staff submitted proof that said notice of hearing and complaint directed respondent Persheff to appear for a pre-hearing conference on May 20, 2004. The affirmation of attorney Conlon indicates that respondent Persheff failed to appear at said conference and did not obtain, nor request an adjournment of the conference.

Default Procedures:

6 NYCRR 622.15, “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." DEC Staff has not established that the notice of hearing and complaint were served on respondent Persheff. Light was not a named party in the notice of hearing and complaint and therefore is not a proper party for the default.

Ruling

The motion for default judgment is denied.

_____/s/_____
Molly T. McBride
Administrative Law Judge

Albany, New York
July 30, 2004

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