

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations
of Article 23 of the Environmental
Conservation Law of the State of New York
and Order on Consent R4-2000-0831-117

RULING
DEC File No.
R4-2011-1028-137

-by-

JOHN ROBINSON,

Respondent.

PROCEEDINGS

Staff of the Department of Environmental Conservation (DEC Staff) initiated this administrative enforcement action against John Robinson (respondent) for failing to reclaim or apply for a permit, as he was required to by a 2000 consent order (R4-2000-0831-117), for a mine he operates at Bear Springs Mountain on Route 206, Town of Walton, Delaware County, New York. In its complaint, DEC Staff requested an order from the Commissioner: (1) finding the respondent liable; (2) imposing an eight thousand dollar (\$8,000) payable civil penalty; and (3) requiring the respondent to either close and reclaim the mine, or submit a permit application within 60 days. In addition, DEC Staff requested that the respondent be directed to immediately reclaim an area where the mine encroached on Ms. Elizabeth Garcia's property (Tax Map ID #296.-1-61.12).

A notice of hearing and complaint were mailed to the respondent, by certified mail, return receipt requested, on January 3, 2012 and received on January 6, 2012. The respondent failed to file an answer to the complaint or otherwise respond.

By papers dated April 12, 2012, DEC Staff moved for a default judgment and order against the respondent pursuant to 6 NYCRR 622.15. DEC Staff mailed a copy of the default motion and supporting papers to the respondent. DEC Staff's default motion papers consisted of the following documents: (1) a notice of motion; (2) a motion for default judgment and order; (2) the affirmation of DEC Staff counsel Jill Phillips, Esq.; and (4) a cover letter. Attached to Ms. Phillips's affirmation are: (1)

an affidavit of service of the notice of hearing and complaint on the respondent and mailing receipts; (2) a copy of the notice of hearing and complaint; (3) a copy of Order on Consent R4-2000-0831-117; (4) the affidavit of DEC Staff member Patricia Evans; and (5) a proposed order in this matter.

On April 18, 2012, this matter was assigned to me.

On May 29, 2012, after I had completed my default summary report and submitted it to the Commissioner for review, Mr. Robinson sent me a letter. In this letter, the respondent did not contest his default, but raised issues relating to the civil penalty amount sought by DEC Staff and remediation of the site.

On June 12, 2012, a conference call was held with the parties. On this call, Mr. Robinson admitted to receiving the notice of hearing and complaint in January 2012 and not responding. He requested and was granted an opportunity to make a written submission regarding the civil penalty and remediation of the site. This submission is due on June 29, 2012. After this submission is received, the parties will reconvene for a second conference call to discuss bringing this matter to a conclusion.

DISCUSSION

Subdivision 622.15(a) of 6 NYCRR (default procedures) provides that a respondent's failure to file a timely answer, or other specified failures to respond, constitutes a default and a waiver of a respondent's right to a hearing. Subdivision 622.15(b) of 6 NYCRR states that a motion for 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."

In Matter of Alvin Hunt d/b/a Our Cleaners (Decision and Order of the Commissioner, July 25, 2006), the Commissioner set forth the process to be followed by an administrative law judge (ALJ) in reviewing a default motion. First, an examination of the proof of service of notice of hearing and complaint is required as well as the proof of the respondent's failure to appear or file a timely answer. Then an ALJ must consider whether the complaint states a claim upon which relief may be

granted and if so, whether the penalty and any remedial measures sought by staff are warranted and sufficiently supported.

In this case, DEC Staff has met the requirements of 6 NYCRR 622.15 and the complaint sets forth a single cause of action for which relief can be granted. The complaint alleges that the respondent entered into a consent order in October 2000 which required him to either obtain a permit for the mine or reclaim it by May 31, 2001, and that an October 6, 2011 inspection by DEC Staff revealed that Mr. Robinson had failed to comply with the consent order and thereby violated ECL 23-2711(1). In her affirmation, Ms. Phillips states that no answer has been received, though any answer was due no later than January 26, 2012. On a June 12, 2012 conference call, Mr. Robinson admitted his default. Based on this information, DEC Staff is entitled to a default in this matter.

At this point, the default has been established and liability for the violations may be determined. The only issues that remain relate to penalty and remediation. These issues will be addressed following Mr. Robinson's submission, due June 29, 2012. Therefore, it is appropriate at this time to find the respondent in default in this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent John Robinson operates a mine located at Bear Springs Mountain on Route 206, Town of Walton, Delaware County, New York.
2. John Robinson entered into a consent order with DEC Staff (R4-2000-0831-117) which became effective on October 10, 2000.
3. John Robinson was served with a copy of the notice of hearing and complaint on January 6, 2012 by certified mail. No answer was received, though the answer was due on or before January 26, 2012. John Robinson is in default and has waived his right to a hearing with respect to liability.
4. Environmental Conservation Law § 71-1307(1) provides that a person who violates any of the provisions of Article 23 shall be liable for a civil penalty of up to \$8,000 and an

additional penalty of \$2,000 for each day during which the violation continues.

RULING

Respondent John Robinson is liable for violating Consent Order R4-2000-0831-117 and ECL 23-2711(1), as alleged in DEC Staff's January 3, 2012 complaint. An inquiry is being conducted on the appropriate penalty and remedial relief to be imposed in this proceeding.

_____/s/_____
P. Nicholas Garlick
Administrative Law Judge

Dated: June 25, 2012
Albany, NY