

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

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

- by -

**ORDER OF  
DISPOSITION**  
DEC Case No.  
R2-20180914-340

**1084 NY AVE LLC,**

Respondent.

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Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Aldie K. Levine, Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- Chayim Kirshenbaum for respondent

**Proceedings**

The New York State Department of Environmental Conservation (DEC or Department) staff commenced this administrative enforcement proceeding by serving respondent 1084 NY Ave LLC (respondent) with a notice of motion for order without hearing in lieu of complaint dated May 12, 2020. The motion alleged three causes of action related to alleged violations of 6 NYCRR part 613 for failing to maintain an accurate PBS facility registration (first cause of action), failing to properly color code the PBS tank's fill port (second cause of action), and for failing to maintain weekly leak detection reports (third cause of action). Respondent did not respond to Department staff's motion.

The matter was assigned to me, and by ruling dated September 2, 2020, I granted Department staff's motion on the first cause of action and denied the motion on the second and third causes of action. The ruling advised the parties that the matter would be scheduled for hearing on the remaining causes of action and the civil penalty and relief requested by staff. By scheduling order and notice of hearing dated September 2, 2020, I advised the parties that the matter was scheduled for hearing on October 14, 2020. Prior to the hearing, Department staff advised me that the parties were involved in settlement discussions and requested an adjournment of the hearing, which was granted. On October 16, 2020, Department staff advised

me that the matter had been settled and provided me a fully executed copy of an order on consent, dated October 16, 2020, resolving all issues between the Department and respondent in the above captioned matter.

**Discussion**

A stipulation executed by all the parties to the proceeding resolving any or all issues removes those issues from further consideration in the hearing (*see* 6 NYCRR 622.18[c]). Where the parties' agreement resolves all remaining issues, such as the case here, the agreement must be incorporated into a written stipulation and accepted by all parties. The stipulation must then be submitted to the administrative law judge to be included in the hearing record, along with written statements, signed by the parties or their representatives, stating that the stipulation resolves all issues between the parties (*see* DEC Organization and Delegation Memorandum 94-13, *Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings*, May 5, 1994 at 2).

In this proceeding, I have received into the record a signed order on consent incorporating the agreement of the parties, which contains statements indicating that the order on consent resolves all issues between the parties in the above captioned matter.

**Order of Disposition**

ACCORDINGLY, IT IS HEREBY ORDERED that the hearing record in this proceeding is closed.

/s/  
Michael S. Caruso  
Administrative Law Judge

Dated: October 19, 2020  
Albany, New York