

**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 ("ECL") of the State of  
New York and Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
("6 NYCRR"),

**ORDER**

DEC Case No.  
PBS 2-609696SC

- by -

**2477 GRAND AVE. CORP. ,**

Respondent.

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This administrative enforcement proceeding involves allegations of New York State Department of Environmental Conservation ("Department") staff that 2477 Grand Ave. Corp. ("respondent") violated ECL 17-1009 and 6 NYCRR 612.2. Staff alleges in its complaint that respondent failed to renew the registration for its petroleum storage facility located at 2477 Grand Avenue, Bronx, New York ("facility").

As set forth in the ALJ's hearing report, respondent failed to file an answer to the complaint served by Department staff in this matter, failed to appear at a pre-hearing conference scheduled for July 1, 2014, and failed to appear for the adjudicatory hearing scheduled in the matter on July 29, 2014 (see Hearing Report, at 5 [Finding of Fact No. 9]).

On August 1, 2014, an adjudicatory hearing was reconvened before Michael S. Caruso, Administrative Law Judge ("ALJ") of the Department's Office of Hearings and Mediation Services. ALJ Caruso prepared the attached hearing report, which I adopt as my decision in this matter, subject to my comments below.

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommended that Department staff's motion for default be granted (see Hearing Report, at

6), and I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15.

Furthermore, at the hearing Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see Hearing Report, at 5). Accordingly, staff is entitled to a judgment based on record evidence.

Department staff, in its papers, sought a penalty of ten thousand dollars (\$10,000). The ALJ granted Department staff's motion to amend its pleadings to reduce the civil penalty to seven thousand five hundred dollars (\$7,500). Respondent has failed to renew the registration of its facility for approximately four years and ten months. The civil penalty that staff requests is authorized and appropriate and in accordance with administrative precedent in similar proceedings (see, e.g., Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2). I hereby assess a civil penalty of seven thousand five hundred dollars (\$7,500) as requested by staff and recommended by the ALJ. I also direct that respondent submit a registration application and applicable fees to the Department for the facility within fifteen (15) days of service of this order upon it.

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent 2477 Grand Ave. Corp. waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent 2477 Grand Ave. Corp. is adjudged to have violated 6 NYCRR 612.2 for failing to renew the registration of its petroleum storage facility located at 2477 Grand Avenue, Bronx, New York.
- III. Within fifteen (15) days of the service of this order upon respondent, respondent shall submit to the Department a petroleum bulk storage facility registration application, plus applicable registration fees.

- IV. Within fifteen (15) days of the service of this order upon respondent, respondent 2477 Grand Ave. Corp. shall pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. The facility petroleum bulk storage registration application, applicable registration fees, and the penalty payment shall be sent to the following address:
- Office of General Counsel  
NYS Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
Attn: Brooke Turallo.
- VI. Any questions or other correspondence regarding this order shall also be addressed to Brooke Turallo at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent 2477 Grand Ave. Corp., and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/  
By: \_\_\_\_\_  
Joseph J. Martens  
Commissioner

Dated: Albany, New York  
October 14, 2014

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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Conservation Law ("ECL") of the State of  
New York and Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
("6 NYCRR"),

**HEARING REPORT**

DEC Case No.  
PBS 2-609696SC

- by -

**2477 GRAND AVE. CORP.,**

Respondent.

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Procedural History

Staff of the New York State Department of Environmental Conservation ("Department") served Respondent 2477 Grand Ave. Corp. ("respondent") with a notice of hearing and complaint, dated May 29, 2014, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 612.2, for failure to renew the registration of its petroleum storage facility located at 2477 Grand Avenue, Bronx, New York 10468. The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 17-1009 and 6 NYCRR 612.2; (2) assessing a civil penalty in the amount of ten thousand dollars (\$10,000); (3) directing respondent to register its petroleum storage facility within fifteen (15) days of the service of the Commissioner's order on respondent; and (4) granting such other and further relief as the Commissioner shall deem just and appropriate.

Inasmuch as respondent is an active domestic business corporation in the State of New York, service of the notice of hearing and complaint on respondent was made by personally serving the New York State Department of State on May 30, 2014 (see 6 NYCRR 622.3[a][3]; Business Corporation Law § 306). Consistent with Civil Practice Law and Rules ("CPLR") 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by regular mail on May 30, 2014. Respondent failed to file an

answer to the complaint, and failed to appear at a pre-hearing conference scheduled for July 1, 2014, as directed in the cover letter served with the notice of hearing and complaint.

As stated in the notice of hearing, on July 29, 2014, an adjudicatory hearing was convened before Administrative Law Judge ("ALJ") Richard R. Wissler of the Department's Office of Hearings and Mediation Services at the Department's Region 2 offices, 1 Hunter's Point Plaza, 47-40 21<sup>st</sup> Street, Long Island City, New York 11101-5407. Department staff was represented by Benjamin Conlon, Esq., Chief, Remediation Bureau, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1500. No one appeared on behalf of respondent.

Department staff indicated that it was prepared to proceed with the hearing, proffering a program staff witness. Noting for the record that respondent had failed to answer the complaint, failed to appear for the prehearing conference and failed to appear for the adjudicatory hearing, Department staff orally moved for a default judgment pursuant to 6 NYCRR 622.15. The ALJ reserved on the default motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). Moreover, the ALJ noted Department staff's readiness for hearing and noted the failure of respondent to appear. The ALJ advised that the hearing, in the absence of respondent, would be convened on a subsequent date.

On August 1, 2014, the adjudicatory hearing was convened before ALJ Michael S. Caruso at the Department's Central Office at 625 Broadway, Albany, New York 12233. At this stage of the proceedings, and pursuant to an order of the Appellate Division, Third Department, issued in accordance with its rules at 22 NYCRR 805.5, Department staff was represented by law student intern Alexander Belonis under the supervision of Benjamin Conlon, Esq. Department staff orally renewed its motion for a default judgment and also sought judgment on the merits.

Department staff called one witness, John Dow, a law student intern in the Department's Office of General Counsel. In all, nine (9) exhibits were received in evidence.

Applicable Regulatory Provision

Section 612.2. Registration of Facilities

"(a) *Existing facilities.*

"(1) Within one year of the effective date of these regulations, the owner of any petroleum storage facility having a capacity of over 1,100 gallons must register the facility with the department. This shall include any out-of-service facility which has not been permanently closed.

"(2) Registration must be renewed every five years from the date of the last valid registration until the department receives written notice that the facility has been permanently closed or that ownership of the facility has been transferred.

"(b) *Transfer of ownership.* If ownership of the facility changes, the new owner must reregister the facility with the department within 30 days of ownership transfer.

"(c) *New facilities.* The owner must register any new facility with the department before it is placed in service.

"(d) *Substantially modified facilities.* Within 30 days prior to substantially modifying a facility, the owner must notify the department of such modification on forms supplied by the department."

Findings of Fact

The following findings of fact are found based upon the preponderance of record evidence presented at the hearing (see 6 NYCRR 622.11[c]):

1. Respondent 2477 Grand Ave. Corp. is the owner of a petroleum storage facility having a capacity of over 1,100 gallons located at 2477 Grand Avenue, Bronx, New York 10468 ("facility"). In particular, petroleum storage tank number 1 at the facility has a capacity of 3,000 gallons and is located aboveground. (Staff Exhibits 4, 5, 6 and 7.)
2. Respondent is an active domestic business corporation in the State of New York. (Staff Exhibit 8.)
3. On September 8, 2004, the Department issued Petroleum Bulk Storage ("PBS") Registration Certificate No. 2-609696 to

the 2477 Grand Ave. Corp., then and current owner of the facility. This registration expired on September 8, 2009. (Testimony of John Dow; Staff Exhibit 6.)

4. On March 11, 1985, Beltway Co., by deed, transferred all right, title and interest in the facility to respondent 2477 Grand Ave. Corp., the facility's current owner. This deed is recorded in the Office of the City Register of the City of New York, at Reel 585 Page 1262. (Testimony of John Dow; Staff Exhibit 7.)
5. John Dow is a law student intern in the Department's Office of General Counsel, PBS Section, who is authorized to access and inspect the Department's unified information system ("UIS"). The UIS is a database maintained by the Department and contains petroleum storage facility records filed with the Department, which records include petroleum storage facility registrations filed pursuant to 6 NYCRR 612.2. (Testimony of John Dow; see also Staff Exhibit 2, Affidavit of Brooke Turallo.)
6. On August 1, 2014, John Dow searched the petroleum storage facility records contained in the Department's UIS for any petroleum facility registration or renewal registration or any petroleum storage facility re-registration filed by respondent for the facility. (Testimony of John Dow; Staff Exhibit 5.)
7. As a result of his search, John Dow determined that respondent had not renewed the registration for the facility since September 8, 2009, the date on which PBS Certificate 2-609696 expired. (Testimony of John Dow; Staff Exhibits 4, 5, and 6.)
8. As shown by Receipt for Service No. 201406090375 issued by the New York State Department of State, respondent was personally served, on May 30, 2014, pursuant to section 306 of the Business Corporation Law with a notice of hearing and complaint dated May 29, 2014, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 612.2, together with a statement of readiness and supporting affidavit, for failure to renew the registration of its petroleum storage facility located at 2477 Grand Avenue, Bronx, New York 10468. Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by regular mail on May 30, 2014. (Staff Exhibit 3.)

9. Respondent failed to file an answer to the complaint; failed to appear at a pre-hearing conference scheduled for July 1, 2014, as directed in the cover letter served with the notice of hearing and complaint; and failed to appear for the adjudicatory hearing scheduled in the matter on July 29, 2013, as directed in the notice of hearing. (Hearing Record.)

### Discussion

Department staff's proof presents a prima facie case demonstrating that respondent's PBS Certificate No. 2-609696 expired on September 8, 2009, and respondent failed to renew the registration of its petroleum storage facility located at 2477 Grand Avenue, Bronx, New York 10468, in violation of 6 NYCRR 612.2.

The record shows that Department staff duly served the notice of hearing and complaint upon respondent; and that respondent failed to file an answer to the complaint; failed to appear at a pre-hearing conference scheduled for July 1, 2014, as directed in the cover letter served with the notice of hearing and complaint; and failed to appear for the adjudicatory hearing scheduled in the matter on July 29, 2014, as directed in the notice of hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent failed to renew the registration of its petroleum storage facility, in violation of 6 NYCRR 612.2. The Department is entitled to judgment upon the facts proven. At the August 1, 2014 hearing, Department staff orally moved to amend the pleadings to reduce the civil penalty requested to seven thousand five hundred dollars (\$7,500). Pursuant to 6 NYCRR 622.10(b)(1)(i), I granted Department staff's motion to amend the pleadings as there is no prejudice to respondent in reducing the penalty requested.

Department staff's proposed order<sup>1</sup> and the seven thousand five hundred dollar (\$7,500) civil penalty it seeks are consistent with the Department's penalty policy as well as

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<sup>1</sup>At the August 1, 2014 hearing, Department staff requested that the Commissioner adopt the findings and relief contained in the wherefore clause of staff's complaint, as amended herein, as staff's proposed order.



applicable provisions of ECL article 71 and administrative precedent (see e.g. Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2).

Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. granting Department staff's motion for default, holding respondent in default pursuant to the provisions of 6 NYCRR 622.15;
2. holding that, based upon the proof adduced at the adjudicatory hearing, respondent violated 6 NYCRR 612.2 by failing to renew the registration of its petroleum storage facility located at 2477 Grand Avenue, Bronx, New York 10468 on or before September 8, 2009;
3. directing respondent to submit a registration application to the Department for the above facility within fifteen (15) days of service of the Commissioner's order together with the applicable registration fees;
4. directing respondent to pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) within fifteen (15) days of service of the Commissioner's order; and
5. directing such other and further relief as he may deem just and proper.

/s/

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Michael S. Caruso  
Administrative Law Judge

Dated: Albany, New York  
August 5, 2014

**EXHIBIT CHART – PBS EXPEDITED PROCEEDINGS**

*Matter of 2477 Grand Ave. Corp. – DEC Case No. 2-609696SC*  
 August 1, 2014 – Central Office  
 Edrol File No. 010108075322

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	May 20, 2014 Practice Order of the Appellate Division, Third Department (Peters, P.J.), for appointment of law interns, including, Alexander Belonis, with attached consent to appearance.	✓	✓	Department Staff	
2	Cover Letter from Scott W. Caruso, Esq. to respondent, dated May 29, 2014, with Notice of Hearing, Complaint, Statement of Readiness, all dated May 29, 2014, and Affidavit in Support of Notice of Hearing and Complaint of Brooke Turallo, dated May 30, 2014.	✓	✓	Department Staff	
3	Affidavit of Service of Brooke Turallo, dated August 1, 2014. NYS DOS Receipt for Service, dated May 30, 2014.	✓	✓	Department Staff	
4	PBS Application, dated August 30, 2004.	✓	✓	Department Staff	
5	PBS Program Facility Information Report, dated August 1, 2014.	✓	✓	Department Staff	

6	PBS Registration Certificate, issued September 8, 2004, expiration date September 8, 2009	✓	✓	Department Staff	
7	New York City Department of Finance, ACRIS Title Search, dated August 1, 2014 and deed to respondent, dated March 11, 1985.	✓	✓	Department Staff	
8	NYS Department of State Entity Information, dated August 1, 2014.	✓	✓	Department Staff	
9	Affirmation of attempted contact by Alexander Belonis, dated July 30, 2014.	✓	✓	Department Staff	