

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.  
2-603962NJB

-by-

**3525 DECATUR AVENUE LLC,**

Respondent.

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By order dated August 21, 2015 (Order), Acting Commissioner Marc Gerstman assessed a civil penalty in the amount of ten thousand dollars (\$10,000) upon respondent 3525 Decatur Avenue LLC. The penalty was assessed on respondent for violating ECL 17-1009 and 6 NYCRR 612.2(b) because of its failure to reregister a petroleum storage facility located at 3525 Decatur Avenue, Bronx, New York (facility) within thirty (30) days of becoming the owner of the facility.

On December 17, 2015, 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 the facility had in fact been registered at the time of the proceeding. Department attorney Deborah Gorman, in an affirmation dated December 17, 2015 (Affirmation), stated that, following issuance of the Order, respondent contacted Department staff and advised that it had a valid certificate at the time of the proceeding (see Affirmation, ¶ 6). Respondent's certificate was issued under a different petroleum bulk storage number than the previous registration and staff was not aware of this duplicate registration when it commenced the proceeding (see id., ¶¶ 7-10). Department staff has, subsequent to filing its December 17, 2015 motion to vacate, provided a copy of the two most recent facility registration certificates to the Office of Hearings and Mediation Services.

I note that this matter could have been expeditiously resolved if respondent had participated in the underlying proceeding. Respondent, however, failed to file an answer to Department staff's complaint, failed to appear at the scheduled pre-hearing conference, and failed to appear at the adjudicatory hearing (see Order, at 1). If respondent had done so and furnished the valid certificate, the proceeding could have been terminated prior to the issuance of the Order.

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

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

- I. Department staff's motion to vacate the order dated August 21, 2015 in the Matter of 3525 Decatur Avenue LLC 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 August 21, 2015 order in the Matter of 3525 Decatur Avenue LLC that is posted on the Department's website, stating that the order has been vacated.

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_/s/\_\_\_\_\_  
Basil Seggos  
Acting Commissioner

Dated: February 16, 2016  
Albany, New York