

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

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In the Matter of Alleged Violations of  
Article 19 of the New York State  
Environmental Conservation Law  
and Part 232 of Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York

**ORDER**

DEC Case No.  
1-20021030-601

- by -

**RONALD I. BIEBER, INC.,**

Respondent.

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Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Ronald I. Beiber, Inc. by service of a notice of hearing and complaint, both dated June 5, 2006.

In accordance with section 622.3(a)(3) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), the notice of hearing and complaint was hand delivered to the New York State Department of State on June 5, 2006, pursuant to Business Corporation Law § 306(b). Thereafter, also on June 5, 2006, an additional copy of the notice of hearing and complaint was sent by first class mail to respondent's last known address at 32 Pearsall Avenue 4B, Glen Cove, New York.

The complaint alleged violations of the Environmental Conservation Law ("ECL") and 6 NYCRR part 232 arising out of respondent's ownership or operation of a perchloroethylene ("perc") dry cleaning facility located at 1005 Port Washington Boulevard, Port Washington, New York. According to the complaint, on October 5, 2000, a third-party inspector performed an inspection of respondent's dry cleaning facility on behalf of Department staff and identified certain deficiencies and violations documented in a Part 232 Dry Cleaning Compliance Inspection Report. As a result of these deficiencies and violations, Department staff's complaint alleged that respondent:

1. Respondent violated 6 NYCRR 232.6(a) by failing to

install a vapor barrier room enclosure and general exhaust system that meets design and performance requirements;

2. Respondent violated 6 NYCRR 232.14(a)(1) by operating the subject perc dry cleaning facility without a current and valid owner/manager certification;

3. Respondent violated 6 NYCRR 232.14(a)(2) by operating the dry cleaning machine(s) at the subject dry cleaning facility without a current and valid dry cleaning operator certification;

4. Respondent violated 6 NYCRR 201-4 and 6 NYCRR 232.15 by operating the subject dry cleaning facility without having applied for and received a registration certificate from the Department by the applicable deadline;

5. Respondent violated 6 NYCRR 232.6(b)(6)(iv) by operating a dry cleaning machine with perc concentrations in the machine drum over the statutory limit; and

6. Respondent violated 6 NYCRR 232.7(h) and 40 CFR 63-M.322(k) by operating a dry cleaning machine with perc emissions in the lint traps over the statutory level.

Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint expired on June 25, 2006, and was not extended by Department staff. Respondent failed to file a timely answer or otherwise appear. Respondent also failed to appear at the pre-hearing conference held on August 2, 2006 at the Department's Region 1 headquarters in Stony Brook, New York. Accordingly, respondent is in default and has waived the right to a hearing.

Department staff filed a motion for default judgment, dated February 6, 2007, with the Department's Office of Hearings and Mediation Services. Department staff also served the motion on respondent by mail, together with staff's prior submissions (including but not limited to the notice of hearing and complaint) at respondent's new address. The matter was assigned to Administrative Law Judge ("ALJ") P. Nicholas Garlick, who prepared the attached default summary report. I adopt ALJ Garlick's report as my decision in this matter, subject to the following comments.

Department staff, in its fifth and sixth causes of action, states that, based on the inspection of respondent's dry cleaning facility, respondent exceeded statutory limits with

respect to its perc emissions. However, although Department staff references in those causes of action specific State regulations that were violated, it fails to identify the statutes that it alleges were violated. Accordingly, in this order respondent is adjudged to have violated only the cited regulations in those two causes of action.

Also, in the sixth cause of action, Department staff references a violation of a federal regulatory standard as well as a state regulation. The federal regulation, however, is incorrectly cited. It is not clear whether the incorrect citation provided respondent with adequate notice of the federal regulation charged. Accordingly, respondent is adjudged only to have violated a state regulation with respect to the sixth cause of action. Because, however, the proposed penalty and remedial measures are fully supported by State legal authorities charged in this complaint, it need not be determined whether respondent was sufficiently apprized of the federal regulation.

Based upon the record, I conclude that the proposed civil penalty and remedial measures sought by Department staff to address the violations are authorized and appropriate. I also conclude that the dates recommended by staff by which respondent is to achieve compliance with applicable regulatory standards are authorized and reasonable.

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

I. Pursuant to 6 NYCRR 622.15, Department staff's motion for a default judgment against respondent Ronald I. Bieber, Inc. is granted.

II. Respondent is adjudged to be in default and to have waived the right to a hearing in this administrative enforcement proceeding. Accordingly, the factual allegations against respondent, as contained in the complaint, are deemed to have been admitted by respondent.

III. Respondent is adjudged to have violated the provisions of 6 NYCRR 232.6(a) on October 5, 2000 by failing to install a vapor barrier room enclosure and general exhaust system that meets design and performance requirements.

IV. Respondent is adjudged to have violated the provisions of 6 NYCRR 232.14(a)(1) on October 5, 2000 by operating the subject perc dry cleaning facility without a current owner/manager certification.

V. Respondent is adjudged to have violated the provisions of 6 NYCRR 232.14(a)(2) on October 5, 2000 by operating the dry cleaning machinery at the subject perc dry cleaning facility without a current and valid dry cleaning operator certification.

VI. Respondent is adjudged to have violated the provisions of 6 NYCRR 201-4 and 6 NYCRR 232.15 by operating the subject dry cleaning facility without having applied for and received a registration certificate from the Department by the applicable deadline.

VII. Respondent is adjudged to have violated the provisions of 6 NYCRR 232.6(b)(6)(iv) by operating a dry cleaning machine with perc concentrations in the machine drum over the regulatory limit.

VIII. Respondent is adjudged to have violated the provisions of 6 NYCRR 232.7(h) by operating a dry cleaning machine with perc emissions in the lint traps over the regulatory limit.

IX. Respondent Ronald I. Bieber, Inc. is hereby assessed a civil penalty in the amount of two thousand five hundred dollars (\$2,500). The civil penalty shall be due and payable within thirty (30) days after the service of this order upon respondent. Payment shall be made in the form of a cashier's check, certified check or money order payable to the order of the "New York State Department of Environmental Conservation" and mailed to the Department at the following address:

Michael J. Derevlany, Esq.  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5500

X. Respondent is hereby directed:

A. Within fifteen (15) days after service of this order to: (1) properly seal the vapor barrier room; (2) submit an application for an air facility registration to the Department; (3) maintain a perc in drum concentration within the prescribed limit of the existing 4<sup>th</sup> generation perc dry cleaning machine; and (4) take all necessary actions to repair the subject dry cleaning equipment to prevent any fugitive perc emissions of 50 ppm or more. If respondent fails to accomplish the four actions directed above, the

failure shall be deemed grounds to seal all air contamination sources at the subject dry cleaning facility pursuant to 6 NYCRR 200.5; and

- B. Within one hundred twenty (120) days after service of this order, to obtain a State certification as an owner/manager and operator of perchloroethylene dry cleaning facilities or hire a State certified owner/manager and certified operator to operate the facility until such time as Respondent achieves certification. If respondent fails to take the corrective action within this time period, the dry cleaning machinery at the subject facility cannot be operated and such failure shall be deemed grounds to seal all air contamination sources at the subject dry cleaning facility pursuant to 6 NYCRR 200.5.

XI. All communications from respondent to the Department concerning this order shall be made to: Michael J. Derevlany, Esq., New York State Department of Environmental Conservation, 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233-5500.

XII. The provisions, terms and conditions of this order shall bind respondent Ronald I. Beiber, Inc., and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By: \_\_\_\_\_  
Alexander B. Grannis

Dated: March 19, 2008  
Albany, New York

TO: Ronald I. Bieber, Inc. (By certified mail)  
c/o Munsey Cleaners  
5 Main Street  
Port Washington, NY 11050

Michael J. Derevlany, Esq. (By regular mail)  
New York State Department of  
Environmental Conservation  
Division of Environmental Enforcement  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5500

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

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In the Matter of Alleged Violations of  
Article 19 of the New York State  
Environmental Conservation Law ("ECL")  
and Part 232 of Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
("6 NYCRR"),

**DEFAULT  
SUMMARY REPORT**

DEC Case No.  
D1-20021030-601

- by -

**RONALD I. BIEBER, INC.,**

Respondent.

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**Proceedings**

On June 5, 2006, Staff of the Department of Environmental Conservation (Department) commenced this administrative enforcement proceeding against respondent Ronald I. Bieber, Inc. by hand delivering an original and one copy of a notice of hearing and complaint, both dated June 5, 2006, upon the New York State Department of State, pursuant to Business Corporation Law ("BCL") § 306(b). Thereafter, on the same date, Department Staff served an additional copy of the notice of hearing and complaint upon respondent by first class mail at respondent's last known address, pursuant to Civil Practice Law and Rules § 3215(g) (4).

According to the complaint, respondent Ronald I. Bieber, Inc. owns or operates a dry cleaning facility located at 1005 Port Washington Blvd., Port Washington (Nassau County), New York. The complaint maintains that respondent's facility is a perchloroethylene ("perc") dry cleaning facility as described in section 232.1(a) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), and an air contamination source as defined by 6 NYCRR 200.1(f).

The complaint alleges that, on October 5, 2000, a third-party inspector performed an inspection of respondent's perc dry cleaning facility on behalf of Department Staff and identified certain deficiencies and violations documented in a Part 232 Dry Cleaning Compliance Inspection Report. As a result

of these deficiencies and violations, Department Staff's complaint alleged that:

1. Respondent violated 6 NYCRR 232.6(a) by failing to install a vapor barrier room enclosure and general exhaust system that meets design and performance requirements;
2. Respondent violated 6 NYCRR 232.14(a)(1) by operating the subject perc dry cleaning facility without a current and valid owner/manager certification;
3. Respondent violated 6 NYCRR 232.14(a)(2) by operating the dry cleaning machine(s) at the subject dry cleaning facility without a current and valid dry cleaning operator certification;
4. Respondent violated 6 NYCRR 201-4 and 6 NYCRR 232.15 by operating the subject dry cleaning facility without having applied for and received a registration certificate from the Department by the applicable deadline;
5. Respondent violated 6 NYCRR 232.6(b)(6)(iv) by operating a dry cleaning machine with perc concentrations in the machine drum over the statutory limit; and
6. Respondent violated 6 NYCRR 232.7(h) and 40 CFR 63-M.322(k) by operating a dry cleaning machine with perc emissions in the lint traps over the statutory level.

The notice of hearing stated that, pursuant to 6 NYCRR 622.4, respondent Ronald I. Bieber, Inc. must serve an answer upon Department Staff within twenty (20) days of receiving the notice of hearing and complaint. As provided for by 6 NYCRR 622.8, the notice of hearing also scheduled a pre-hearing conference for August 2, 2006 at the Department's Region 1 headquarters in Stony Brook, New York. The notice of hearing stated that if respondent failed either to file an answer or to attend the pre-hearing conference as scheduled, respondent would be in default and would waive its right to a hearing.

With a cover letter dated February 6, 2007, Michael J. Derevlany, Esq., compliance counsel for the Division of Air Resources within the Department's Division of Environmental Enforcement, filed a notice of motion for default judgment and a motion for default judgment, both dated February 6, 2007, with supporting papers against respondent Ronald I. Bieber, Inc. The supporting papers consisted of an affirmation by Mr. Derevlany dated February 6, 2007, which documents respondent's failure to



file a timely answer and failure to appear at the pre-hearing conference, along with attached Exhibits marked A, B, C, D, E and F.

Exhibit A contains a copy of a notice of hearing and complaint, both dated March 7, 2003, which Department Staff served on that date. Department Staff in its submissions indicates that it determined to re-commence the proceeding by serving a notice of hearing and complaint on June 5, 2006.

Exhibit B contains two affidavits of service. The first, signed by DEC Staff member Donald R. Fennelly, states that on March 7, 2003 he served Ronald I. Bieber by certified mail - return receipt requested at the address: 32 Pearsall Avenue, Apt. 4B, Glen Cove, NY 11542. Attached to this affidavit is a US Postal Service receipt (#7155 5474 4100 0778 2306) apparently signed by Ronald I. Bieber on March 10, 2003. The second affidavit of service, also signed by Mr. Fennelly, states that on March 7, 2003 he served Ronald I. Bieber by certified mail - return receipt requested at the address: 1005 Washington Boulevard, Port Washington, NY 11050. Attached to this affidavit is a US Postal Service receipt (#7155 5474 4100 0778 2290) signed on March 10, 2003. This second receipt indicates that the addressee was Ronald I. Bieber, Inc.

Exhibit C contains a June 5, 2006 cover letter from DEC Staff counsel Alyce M. Gilbert to Ronald I. Bieber, Inc. stating DEC Staff was serving a new notice of hearing and complaint pursuant to BCL 306(b). Attached to Ms. Gilbert's letter is the new notice of hearing dated June 5, 2006 and new complaint of the same date. Attached as exhibit A to the complaint is a ten page "Part 232 Dry Cleaning Compliance Inspection Report" describing an inspection that occurred on October 5, 2000.

Exhibit D is an affidavit by Department Staff attorney Alyce M. Gilbert, Esq. who states that on June 5, 2006 she served the new notice of hearing and new complaint upon respondent by hand delivering same to the New York Department of State and mailing same to respondent pursuant to CPLR 3215(g)(4) at respondent's last known address. This affidavit was sworn to by Alyce M. Gilbert on February 6, 2007.

Exhibit E is a technical affidavit of Department Staff engineer Robert Waterfall sworn to on February 6, 2007. Exhibit F is an affidavit of Department Staff scientist Thomas Gentile sworn to on February 6, 2007. The affidavits describe the environmental harm and human health risks associated with perc releases and respondent's violations of the cited provisions of 6

NYCRR part 232. Pursuant to 6 NYCRR 622.15(b), Department Staff also provided a copy of a proposed order with its default motion papers.

Department Staff's cover letter accompanying the instant motion indicate that a copy of the motion papers were mailed to respondent and to the Department's Chief Administrative Law Judge ("Chief ALJ"), who assigned the matter to me in a letter dated March 7, 2007.

Pursuant to the Department's regulations, all parties have five days after a motion is served to file a response (see 6 NYCRR 622.6[c][3]). When the time for performance of some act is measured from the service of an interlocutory paper (such as a motion), and service is made by mail, CPLR 2103(c) gives the party so served five additional days within which to act. Thus, respondent had until June 15, 2006 to file a response to Department Staff's motion (see also 6 NYCRR 622.6[b][2]).

The bases for Staff's motion for default judgment, as set forth in Mr. Derevlany's affirmation, are respondent's failure to file a timely answer to the June 5, 2006 complaint, and respondent's failure to appear at the August 2, 2006 pre-hearing conference. Department Staff's submissions which accompanied its default motion (including but not limited to the notice of hearing and complaint), indicate that a copy of the motion and supporting papers, as described above, was mailed to respondent Ronald I. Bieber, Inc, c/o Munsey Cleaners, 5 Main Street, Port Washington, NY 11050, which is respondent's current address.

### **Findings of Fact**

1. On June 5, 2006, Department Staff attorney Alyce M. Gilbert, Esq. served a notice of hearing and complaint, both dated June 5, 2006, in DEC Case No. 1-20021030-601 upon respondent Ronald I. Bieber, Inc. by hand delivering one original and one copy of the notice of hearing and complaint to the New York State Department of State, pursuant to BCL § 306(b).
2. On June 5, 2006, Department Staff attorney Alyce M. Gilbert, Esq. served an additional copy of the June 5, 2006 notice of hearing and complaint upon respondent, by first class mail at respondent's last known address, pursuant to CPLR 3215(g)(4).
3. The June 5, 2006 notice of hearing stated that, pursuant to

6 NYCRR 622.4, respondent Ronald I. Bieber, Inc. must serve an answer upon Department Staff within twenty (20) days of receiving the notice of hearing and complaint. As provided for by 6 NYCRR 622.8, the notice of hearing also scheduled a pre-hearing conference for August 2, 2006 at the Department's Region 1 headquarters in Stony Brook, New York. The notice of hearing stated that if respondent failed either to file an answer or to attend the pre-hearing conference as scheduled, respondent would be in default and would waive its right to a hearing.

4. With respect to the June 5, 2006 complaint, the time for respondent to serve an answer expired on June 25, 2006. As of the date of Department Staff's default motion, respondent had not filed an answer.
5. With respect to the August 2, 2006 pre-hearing conference, respondent Ronald I. Bieber, Inc. failed to appear at the time and place as set forth in the June 5, 2006 notice of hearing.

### **Discussion**

Department Staff may commence an administrative enforcement proceeding by service of a notice of hearing and complaint (see 6 NYCRR 622.3[a][1]). Service of the notice of hearing and complaint must be by personal service consistent with the CPLR or by certified mail (see 6 NYCRR 622.3[a][3]).

Pursuant to the Department's uniform enforcement hearing regulations, a respondent's failure either to file a timely answer or to appear at a pre-hearing conference constitutes a default and a waiver of the respondent's right to a hearing (see 6 NYCRR 622.15[a]). Under these circumstances, Department Staff may move for a default judgment. Pursuant to 6 NYCRR 622.15(b), Staff's default motion must contain:

- a. Proof of service upon the respondent of the notice of hearing and complaint or other such document which commenced the proceeding;
- b. Proof of the respondent's failure to file a timely answer or to appear at a pre-hearing conference; and
- c. A proposed order.

The February 6, 2007 affidavit of service and mailing of Department Staff attorney Alyce M. Gilbert, Esq. demonstrates service of the June 5, 2006 notice of hearing and complaint upon respondent in a manner consistent with the requirements set forth in 6 NYCRR 622.3(a)(3), BCL § 306(b), and CPLR 3215(g)(4). (See Matter of Polanaya Corp., Order of the Acting Commissioner, April 12, 2005, at 1.) In addition, the February 6, 2007 affirmation of Department Staff attorney Michael J. Derevlany, Esq. demonstrates that respondent did not timely file any answer to the June 5, 2006 complaint and did not appear at the pre-hearing conference held on August 2, 2006.

Based on these circumstances, respondent Ronald I. Bieber, Inc. has defaulted and waived its right to a hearing, and Department Staff is entitled to a default judgment pursuant to 6 NYCRR 622.15(a). By operation of the default, respondent is deemed to have admitted the factual allegations set forth in Staff's complaint. Staff's motion papers also set forth factual allegations that demonstrate respondent's liability for each cause of action alleged by Staff. Therefore, respondent's liability is established.

Department Staff has provided a proposed order with its default motion papers. The proposed order would assess a total civil penalty of \$2,500. In addition to the civil penalty, DEC Staff attorney Develany requests the Commissioner order the respondent to comply with applicable requirements of ECL article 19 and 6 NYCRR part 232 within certain specified time periods. Specifically, respondent should be ordered to undertake the following within 15 days of the service of the Commissioner's Order: (1) properly seal the vapor barrier room; (2) submit an application for an air facility registration to the Department; (3) maintain a perc in drum concentration within the prescribed limit of the existing 4<sup>th</sup> generation perc dry cleaning machine; and (4) take all necessary actions to repair the subject dry cleaning equipment to prevent any fugitive perc emissions of 50 ppm or more.

In addition, the respondent should be ordered within 120 days of the commissioner's order to: obtain a State certification as an owner/manager and operator of perchloroethylene dry cleaning facilities or hire a State certified owner/manager and certified operator to operate the facility until such time as respondent achieves certification. DEC Staff also asks the Commissioner to authorize the sealing of all air contamination sources at the facility pursuant to 6 NYCRR 200.5 if the respondent fails to take the corrective actions in a timely manner.

When a respondent defaults, he waives the right to a hearing and is deemed to have admitted the factual allegations of the complaint with respect to liability for the violations charged. Department Staff, however, still has the obligation to prove damages. (See Matter of Alvin Hunt d/b/a Our Cleaners, Decision and Order of the Commissioner, July 25, 2006, at 3-4.)

Any person, which includes a corporation (see ECL 19-0107[1] and 6 NYCRR 200.1[bi]), who violates any provision of ECL article 19 or any code, rule or regulation which was promulgated thereto shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for said violation for each day during which such violation continues (see ECL 71-2103[1]).

Here, Department Staff has proposed a total civil penalty that is substantially less than the potential maximum that could be assessed under the applicable provisions of law. In addition, the civil penalty requested by Department Staff is appropriate and consistent with civil penalties assessed previously by the Commissioner in similar cases.

Finally Department Staff's default motion includes a schedule to bring respondent's perc dry cleaning facility into compliance with the applicable regulations within certain time periods following the date of service of a copy of an order in this matter. I conclude that the dates in the compliance schedule outlined in Staff's default motion are authorized and reasonable.

### **Conclusions**

1. Respondent Ronald I. Bieber, Inc. has defaulted and, therefore, has waived the right to a hearing with respect to liability for the violations alleged in the complaint. By defaulting, respondent is deemed to have admitted the factual allegations set forth in the complaint.
2. Respondent's liability for the six causes of action alleged in the complaint has been established.
3. Department Staff's proposed total civil penalty of \$2,500 is rational and supported by the record. The penalty is justified and the total penalty is below the statutory maximum amount under ECL 71-2103(1) that could be assessed

for any one of the Part 232 violations cited, individually. On that basis, and given the duration of the violations, there is ample statutory support for the penalty requested by Department Staff.

4. Department Staff has provided sufficient justification for the proposed compliance schedule.

**Recommendation**

The motion for default judgment should be granted, and an order issued as described above providing the relief requested by Department Staff.

/s/

\_\_\_\_\_  
P. Nicholas Garlick  
Administrative Law Judge

March 11, 2008  
Albany, New York