

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

In the Matter of the Alleged
Violations of Article 19 of the
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"),

ORDER

DEC Case No.
R2-20050210-34

- by -

**CHRIS BLENMAN,
d/b/a FRENCH NATIONAL CLEANERS,**

Respondent.

Staff of the New York State Department of Environmental Conservation ("Department" or "DEC") commenced this administrative enforcement proceeding against respondent Chris Blenman, doing business as French National Cleaners, by service of a motion for order without hearing and complaint dated June 28, 2006.

In accordance with 6 NYCRR 622.3(a)(3), respondent was served with a copy of the motion for order without hearing and complaint on June 29, 2006 at 1569 St. Johns Place, Brooklyn (Kings County), New York 11213 where respondent, according to the complaint, "owns, operates and/or maintains" a dry cleaning facility ("facility").

The facility, at which is located a fourth generation perchloroethylene dry cleaning machine, is subject to the requirements of 6 NYCRR part 232. Department staff alleged that respondent failed to comply with equipment standards and specifications by leaving the facility's sliding vapor barrier entry doors open, thereby violating 6 NYCRR 232.6(a)(1). Department staff also alleged that respondent failed to comply with the applicable inspection requirements in 6 NYCRR 232.16 by not having a third-party compliance inspection conducted.

Respondent's time to respond to the motion has expired, and was not extended by Department staff. Subsequently,

Department staff filed a motion for default judgment dated August 7, 2006, with the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") Susan J. DuBois, who prepared the attached default summary report. I adopt ALJ DuBois's report as my decision in this matter, subject to the following comments.

Pursuant to ECL 71-2103(1), any person who violates any provision of ECL article 19 or any code, rule or regulation promulgated pursuant thereto (including but not limited to 6 NYCRR part 232) would be liable, in the case of a first violation, for a penalty of not more than fifteen thousand dollars for the violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues.

Department staff requested an order of the Commissioner imposing a civil penalty upon respondent of twenty-five thousand one hundred and sixty dollars (\$25,160), which includes a one thousand dollar (\$1,000) penalty for the violation of 6 NYCRR 232.6(a)(1) and a twenty-four thousand one hundred sixty dollar (\$24,160) penalty for violation of 6 NYCRR 232.16(a).

As stated in the affidavit of DEC environmental engineer Niranjani Gandhi ("Gandhi Affidavit"), respondent acquired the facility on January 17, 2005. An inspection of the facility found that the facility's vapor barrier entry doors were left open (see Exhibit B to the Gandhi Affidavit). As to the third party compliance inspection, it must be conducted at least annually. The specific date by which the inspection should have been performed is not clear from the record. However, no inspection was conducted by respondent from the date it acquired the facility to the date of the complaint, a period of greater than one year. Furthermore, Department staff notified respondent, as owner of the facility, of its failure to comply with the inspection requirement (see Exhibit C to the Gandhi Affidavit), but no inspection was conducted.

Based on my review of this record, the proposed penalty for the violations of 6 NYCRR 232.6(a)(1) and 6 NYCRR 232.16(a)(2) is substantially below the statutory maximum and is fully justified by the circumstances of this case.

Department staff has also requested that the Commissioner's order direct respondent to have a third-party compliance inspection of the facility conducted immediately. In consideration of the time that would be required to schedule the inspection and provide the inspection pre-notification (see 6

NYCRR 232.16[d]), I direct that the third-party compliance inspection be conducted within forty-five (45) days of the service of this order upon respondent.

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 is granted.

II. Respondent Chris Blenman, doing business as French National Cleaners, is adjudged to be in default and to have waived the right to a hearing in this enforcement proceeding. Accordingly, the allegations against respondent, as contained in the complaint, are deemed to have been admitted by respondent.

III. Respondent is adjudged to have violated 6 NYCRR 232.6(a)(1) by leaving the sliding vapor barrier entry doors open at the facility, and 6 NYCRR 232.16 by failing to have a third-party compliance inspection conducted at the facility at least annually.

IV. Respondent Chris Blenman is hereby assessed a civil penalty in the amount of twenty-five thousand one hundred sixty dollars (\$25,160) which shall be due and payable within twenty (20) days after 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: New York State Department of Environmental Conservation, Region 2 Office, 47-40 21st Street, Long Island City, New York 11101-5407, ATTN: Regional Attorney.

V. Respondent shall have a third-party compliance inspection of the facility conducted within forty-five (45) days of the service of this order.

VI. All communications from respondent to the Department concerning this order, other than the payment of the penalty, shall be made to John F. Byrne, Assistant Regional Attorney, New York State Department of Environmental Conservation, Region 2 Office, Legal Affairs, 47-40 21st Street, Long Island City, New York 11101-5407.

VII. The provisions, terms and conditions of this order shall bind respondent Chris Blenman and his agents, successors and assigns, in any and all capacities.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____/s/_____
Denise M. Sheehan
Commissioner

Dated: September 11, 2006
Albany, New York

In the Matter of the 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

DEFAULT SUMMARY
REPORT

DEC File No.
R2-20050210-34

by

CHRIS BLENMAN,
d/b/a FRENCH NATIONAL CLEANERS,

September 1, 2006

Respondent.

Staff of the Department of Environmental Conservation ("DEC Staff") commenced this administrative proceeding by serving a notice of motion for order without hearing and a complaint upon Chris Blenman, doing business as French National Cleaners ("Respondent"), by certified mail on June 29, 2006. The complaint alleges violations of Environmental Conservation Law ("ECL") article 19 and part 232 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). DEC Staff alleges that Respondent violated certain equipment standards and inspection requirements at a dry cleaning facility Respondent owns, operates and/or maintains at 1569 St. Johns Place, Brooklyn, New York, 11213.

The enforcement hearing procedures of 6 NYCRR part 622 govern this matter.

By motion dated August 7, 2006, DEC Staff sought a judgment by default against Respondent pursuant to 6 NYCRR 622.15, on the basis that Respondent failed to timely file an answer to the complaint. In support of its motion for a default judgment, DEC Staff submitted an affirmation of John F. Byrne, Esq., Assistant Regional Attorney, DEC Region 2, to which are attached a proposed order and proof of service of the notice of motion for an order without hearing and the complaint in this matter.

DEFAULT PROCEDURES

Section 622.15 of 6 NYCRR (Default Procedures) provides, in pertinent part, 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."

Under the DEC enforcement hearing procedures, an administrative enforcement proceeding may be commenced by service of a notice of hearing accompanied by a complaint (6 NYCRR 622.3(a)), by service of a motion for order without hearing accompanied by supporting affidavits and other available documentary evidence (6 NYCRR 622.12(a)), or by other papers not relevant here (6 NYCRR 622.14). In the present case, DEC Staff commenced the proceeding by serving upon Respondent a notice of motion for order without hearing accompanied by a complaint, a supporting affidavit, a penalty calculation and documentary evidence. The documents in the record do not indicate that DEC Staff served a notice of hearing. Accordingly, this proceeding is being treated as a motion for order without hearing, under 6 NYCRR 622.12, followed by a motion for default judgment based upon Respondent's failure to respond to the motion for order without hearing (see 6 NYCRR 622.12(b)).

Both the complaint and the motion for a default judgment sought an order of the Commissioner requiring Respondent to pay a civil penalty of \$25,160 and ordering Respondent to immediately have a third-party compliance inspection of the facility conducted.

The following findings are based upon the papers submitted, as identified above.

FINDINGS

1. On June 28, 2006, DEC Staff mailed the notice of motion for order without hearing, accompanied by a complaint, an affidavit, documentary evidence and a penalty calculation, to Chris Blenman doing business as French National Cleaners ("Respondent"). These documents were sent to Respondent by certified mail, return receipt requested. On July 3, 2006, the DEC Region 2 Office received the return receipt with a delivery date of "6-29" (presumably June 29, 2006) entered on the receipt.

2. The notice of motion for order without hearing stated that Respondent must, within 20 days following receipt of the motion, serve a response to the motion upon the DEC Chief Administrative Law Judge at the DEC Office of Hearings and Mediation Services' Albany address. The notice further stated that failure to timely reply to the motion would result in a default and a waiver of Respondent's right to a hearing.

3. Based upon Mr. Byrne's August 7, 2006 affirmation, Respondent failed to serve an answer by August 7, 2006 and had not contacted DEC Staff about the complaint as of that date. The DEC Chief Administrative Law Judge has not received an answer or response from the Respondent as of September 1, 2006.

4. Respondent owns, operates and/or maintains a dry cleaning business located at 1569 St. Johns Place, Brooklyn, New York 11213. Pursuant to 6 NYCRR 232.6(a)(1), vapor barriers must, at a minimum, enclose the dry cleaning equipment, and the entry doors may only be open when a person is entering or exiting the room enclosure. The complaint alleged the following violations took place at this facility: (1) the sliding vapor barrier entry doors were open on January 26, 2005, in violation of 6 NYCRR 232.6(a)(1); and (2) Respondent failed to comply with its annual compliance inspection requirement "[b]y not having a third-party compliance inspection of the Facility conducted during January 1, 2006 to June 26, 2006," in violation of 6 NYCRR 232.16. The complaint also alleged that DEC Staff issued a notice of violation on January 30, 2006 concerning the lack of inspection, but Respondent had not had an inspection conducted as of June 28, 2006, the date of the complaint.

5. The motion for order without hearing included a penalty calculation and an affidavit of Niranjana Gandhi, Environmental Engineer II, DEC Region 2. The motion for a default judgment included a proposed order.

6. Mr. Gandhi's affidavit is dated June 26, 2006. Mr. Gandhi supervises the Dry Cleaning Section in Region 2, Division of Air. According to Mr. Gandhi's affidavit, a DEC engineer's review of Respondent's file on January 30, 2006 indicated that Respondent acquired the facility on January 17, 2005 and did not have a third-party annual compliance inspection conducted during the period from January 17, 2005 to December 31, 2005. Mr. Gandhi's affidavit stated that a notice of violation was sent to Respondent on January 30, 2006 concerning the lack of inspection and ordering Respondent to operate in full compliance with 6 NYCRR part 232. The mail return receipt attached with Exhibit C of Mr. Gandhi's affidavit demonstrates that Respondent received this notice of violation on March 13, 2006. As of June 26, 2006, the date of the affidavit, Respondent still had not had a third-party compliance inspection conducted at the facility.

CONCLUSIONS

1. Paragraph 622.3(b)(1) of 6 NYCRR provides for DEC administrative enforcement proceedings to be commenced by service of a motion for order without hearing pursuant to 6 NYCRR 622.12. A motion for order without hearing is to be served in the same manner as a notice of hearing and complaint (6 NYCRR 622.12(a)). Notices of hearing and complaints must be served by personal service consistent with the Civil Practice Law and Rules (CPLR) or by certified mail. Where service is by certified mail, service shall be complete when the documents that commence the proceeding are received (6 NYCRR 622.3(a)(3)).

2. DEC Staff served the notice of motion for order without hearing and the complaint upon the Respondent by certified mail, return receipt requested, received by Respondent on June 29, 2006. Service was complete on that date. Respondent's response to the motion was due on or before July 19, 2006, twenty days after the date of service (6 NYCRR 622.12(b) and (c)). No such response was received by the DEC on or before August 7, 2006, nor has any such response been received by the DEC Chief Administrative Law Judge as of September 1, 2006. Therefore, the Respondent is in default.

3. The affidavit that accompanied the motion demonstrates that Respondent violated 6 NYCRR 232.6(a)(1) by leaving open the sliding vapor barrier entry doors. The affidavit also demonstrates that Respondent violated the inspection requirement of 6 NYCRR 232.16(a)(2) by failing to have the facility inspected at least annually. The latter violation continued for at least five months. The penalty sought by DEC Staff for the two violations described in the complaint is authorized by ECL section 71-2103.

4. Pursuant to 6 NYCRR 622.15(a), "A respondent's failure to file a timely answer...constitutes a default and a waiver of respondent's right to a hearing." The motion for a default judgment and order should be granted.

September 1, 2006
Albany, New York

_____/s/_____
Susan J. DuBois
Administrative Law Judge