

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

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. 2-239968.4.2016

-by-

**BRIGHTON HOUSE, INC.,**

Respondent.

---

This administrative enforcement proceeding addresses allegations of the staff of the New York State Department of Environmental Conservation (Department or DEC) that respondent Brighton House, Inc. violated ECL 17-1009 and 6 NYCRR 613-1.9(c) by failing to renew the registration of its petroleum bulk storage facility on or before July 7, 2012, the date on which the facility's prior registration expired. Respondent's facility is located at 500 Brightwater Court, Brooklyn, New York and includes an underground storage tank with a capacity of 10,000 gallons.

On July 21, 2016, an adjudicatory hearing was convened before Michael S. Caruso, Administrative Law Judge (ALJ) of the DEC'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 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 March 24, 2016, and failed to appear for the adjudicatory hearing scheduled in the matter on April 26, 2016 and reconvened on July 21, 2016 (see Hearing Report at 4 [Finding of Fact No. 11]).

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (see Hearing Report at 6). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. At the hearing on July 21, 2016, Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see id.). Accordingly, staff is entitled to a judgment based on record evidence.

The record demonstrates that respondent was required to renew its registration once the registration expired on July 7, 2012 (see ECL 17-1009[2]; Hearing Report at 5). At that time and continuing until October 11, 2015, respondent was also in violation of the registration requirement at former 6 NYCRR 612.2(a), although staff did not reference that regulatory

provision in its papers. Department staff did reference the applicable facility registration requirement of 6 NYCRR 613-1.9(c), which became effective on October 11, 2015 and which replaced the previous registration provision in 6 NYCRR part 612. In future matters, Department staff should cite violations of both regulatory sections where, as here, the violations commenced prior to and continued after October 11, 2015.

ECL 71-1929 provides for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. Department staff, in its papers, sought a civil penalty of ten thousand dollars (\$10,000). At the hearing, Department staff explained that a spill of up to 1,000 gallons of petroleum and subsequent removal of thirty-five tons of petroleum contaminated soil at the facility were aggravating factors that must be considered when calculating the appropriate penalty (see Hearing Report at 4 [Finding of Fact No. 9]). Given the circumstances of the petroleum spill and soil contamination, the ALJ found the requested penalty is consistent with the Department's penalty policy as well as applicable provisions of ECL article 71 and administrative precedent.

As noted, respondent has failed to renew the registration for the facility since July 7, 2012 when the registration expired (see Hearing Report at 3-4 [Finding of Fact No. 8]). Where, as here, an owner has not registered the facility for more than two years but less than five years from the expiration date and aggravating factors exist that resulted in petroleum entering the environment, a civil penalty of ten thousand dollars (\$10,000) is consistent with administrative precedent (see Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2), and is authorized and appropriate. Respondent is directed to submit payment of the civil penalty within fifteen (15) days of service of the order upon it.

I also direct that respondent submit to the Department a petroleum bulk storage application for the facility within fifteen (15) days of service of this order upon it, together with all applicable registration fees.

**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 Brighton House, Inc. waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent Brighton House, Inc. violated (a) ECL 17-1009 and (b) since October 11, 2015, 6 NYCRR 613-1.9(c), for failing to renew the registration of its petroleum bulk storage facility located at 500 Brightwater Court, Brooklyn, New York.
- III. Within fifteen (15) days of the service of this order upon respondent Brighton House, Inc., respondent shall submit to the Department a complete petroleum bulk storage application for the facility, plus applicable registration fees.

- IV. Within fifteen (15) days of the service of this order upon respondent Brighton House, Inc., respondent shall pay a civil penalty in the amount of ten thousand dollars (\$10,000) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. The petroleum bulk storage application, applicable registration fees, and the penalty payment shall be sent to the following address:
- Office of General Counsel (Remediation Bureau)  
NYS Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
Attn: Yvonne M. Ward, Esq.
- VI. Any questions or other correspondence regarding this order shall also be addressed to Yvonne M. Ward, Esq. at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent Brighton House, Inc., and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

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

Dated: Albany, New York  
January 20, 2017

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

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),

**HEARING REPORT**

DEC Case No.  
PBS.2-239968.4.2016

-by-

**BRIGHTON HOUSE, INC.,**

Respondent.

---

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Brighton House, Inc. (respondent) with a notice of hearing and complaint, dated February 16, 2016, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 613-1.9(c) for failing to renew the registration of its petroleum bulk storage facility located at 500 Brightwater Court, Brooklyn, New York on or before July 7, 2012, the date on which its prior registration expired. The complaint seeks an order of the Commissioner: (1) finding respondent in violation of ECL 17-1009 and 6 NYCRR 613-1.9(c); (2) assessing a civil penalty in the amount of ten thousand dollars (\$10,000); (3) directing respondent to register its petroleum bulk storage facility within fifteen (15) days of the service of the Commissioner's order by remitting the applicable registration fee along with a complete registration application; 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 serving the New York State Department of State on February 16, 2016 (see Staff Exhibit 3). Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on February 16, 2016 (see id.). Respondent failed to file an answer to the complaint, and failed to appear at a pre-hearing conference scheduled for March 24, 2016, as directed in the notice of hearing and accompanying cover letter (see Staff Exhibit 2).

As stated in the notice of hearing, on April 26, 2016, an adjudicatory hearing was convened before me at the Department's Region 2 offices, 1 Hunter's Point Plaza, 47-40 21<sup>st</sup> Street, Long Island City, New York. Department staff was represented by Yvonne Ward, Esq., Senior Attorney, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of respondent.

Department staff indicated that it was prepared to proceed with the hearing, proffering a staff witness. Noting for the record that respondent had failed to answer the complaint, failed to appear for the pre-hearing conference and failed to appear for the adjudicatory hearing, Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. I 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, I noted Department staff's readiness for hearing, noted the failure of respondent to appear and advised staff that if staff wished to proceed with the hearing on the matter at a later date, that the hearing would be reconvened on notice to respondent.

The Office of Hearings and Mediation Services served a Notice of Hearing dated June 7, 2016 on respondent by first class mail advising respondent that the hearing on this matter would be reconvened on July 21, 2016 at 10:00 a.m. At 10:15 a.m. on July 21, 2016, the adjudicatory hearing was reconvened before the undersigned at the Department's Central Office at 625 Broadway, Albany, New York 12233. Department staff was represented by law student intern Linnea E. Riegel under the supervision of Yvonne M. Ward, Esq., Senior Attorney, Office of General Counsel. No one appeared on behalf of the respondent.

Department staff orally renewed its motion for a default judgment and also sought judgment on the merits. Department staff called one witness, Benjamin Conlon, Associate Attorney with the Department's Office of General Counsel, and Section Chief in the Bureau of Remediation. In all, ten (10) exhibits were received in evidence.

#### Applicable Regulatory Provision

613-1.9 Registration <sup>1</sup>

\* \* \*

“(c) *Renewal*. Registration must be renewed every five years from the date of the last valid registration certificate until the department receives written notice and documentation from the facility owner that the facility has been permanently closed in accordance with section 613-2.6(b), 613-3.5(b), or 613-4.5(b) of this Part, or that ownership of the facility has been transferred in accordance with subdivision (d) of this section.”

---

<sup>1</sup> Effective October 11, 2015, 6 NYCRR 613-1.9 replaced 6 NYCRR 612.2, Registration of Facilities, which read in part, “(a) *Existing facilities*. . . (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.” ECL 17-1009(2) requires facility registrations to be “renewed every five years or whenever ownership of a facility is transferred, whichever occurs first.”

## Findings of Fact

The following facts are found based upon the preponderance of evidence presented at the hearing, see 6 NYCRR 622.11(c):

1. Respondent Brighton House, Inc. (respondent) is the owner of a petroleum bulk storage facility having a capacity of over 1,100 gallons located at 500 Brightwater Court, Brooklyn, NY (facility). In particular, petroleum storage tank number 001 at the facility has a capacity of 10,000 gallons and is located underground. See Testimony of Benjamin Conlon; Staff Exhibits 5, 6a, 7, and 8.
2. Respondent is an active domestic business corporation in the State of New York. See Testimony of Benjamin Conlon; Staff Exhibit 4.
3. On July 25, 1966, the City of New York, by deed, transferred all right, title and interest in the facility to respondent Brighton House, Inc., the facility's current owner. This deed is recorded in the Office of the City Register of the City of New York, in Reel 295, Page 388. See Testimony of Benjamin Conlon; Staff Exhibit 5.
4. Respondent submitted a Petroleum Bulk Storage (PBS) Application, dated March 12, 2007, to renew its PBS registration. The application and fee were returned on March 21, 2007 because respondent's 10,000 gallon underground storage tank was overdue for tightness testing. Respondent resubmitted the application with the missing information, which was received on April 6, 2007 and processed by Department staff. See Testimony of Benjamin Conlon; Staff Exhibit 6a.
5. On April 11, 2007, the Department issued PBS Registration Certificate No. 2-239968 to respondent. This registration expired on July 7, 2012. See Testimony of Benjamin Conlon; Staff Exhibit 7.
6. Benjamin Conlon is an Associate Attorney in the Department's Office of General Counsel, serving as a Section Chief in the Bureau of Remediation, whose responsibilities include enforcement of the Petroleum Bulk Storage, Chemical Bulk Storage, and Major Oil Storage Facilities laws and regulations. Mr. Conlon is authorized to access and inspect the Department's unified information system (UIS) and the electronic repository for scanned documents known as DecDOCS. The UIS and DecDOCS are databases maintained by the Department and contain petroleum bulk storage facility records filed with the Department, which records include petroleum bulk storage facility registrations filed pursuant to 6 NYCRR 613-1.9. See Testimony of Benjamin Conlon.
7. On July 5, 2016, Benjamin Conlon searched the petroleum bulk storage facility records contained in the Department's UIS and DecDOCS databases for any petroleum bulk storage facility registration or renewal registration filed by respondent for the facility. See Testimony of Benjamin Conlon.
8. As a result of his search, Benjamin Conlon confirmed that respondent had not renewed

the registration of the facility since the prior registration expired on July 7, 2012. See Testimony of Benjamin Conlon; see also Staff Exhibit 8 (includes handwritten initials of witness reflecting that he checked database on July 20, 2016).

9. Also as a result of his search, Mr. Conlon found that a spill had been reported at respondent's facility on February 24, 2014 due to a leaking fill pipe. Thirty-five tons of petroleum contaminated soil was removed. Department staff noted that as of May 6, 2016 the tank was overdue for tightness testing. See Staff exhibit 6b; Hearing record.
10. As shown by Receipt for Service No. 201602250025 issued by the New York State Department of State, respondent was served personally, on February 16, 2016, pursuant to section 306 of the Business Corporation Law with a notice of hearing and complaint dated February 16, 2016, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 613-1.9(c), together with a cover letter, statement of readiness and supporting affirmation, for failure to renew the registration of its petroleum bulk storage facility located at 500 Brightwater Court, Brooklyn, New York on or before July 7, 2012, the date that the prior registration expired. Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on February 16, 2016. See Staff Exhibits 2 and 3; see also Hearing Record.
11. Respondent failed to file an answer to the complaint, failed to appear at a pre-hearing conference scheduled for March 24, 2016, as directed in the notice of hearing and accompanying cover letter, and failed to appear for the adjudicatory hearing scheduled in the matter on April 26, 2016 and reconvened on July 21, 2016, as directed in the notices of hearing. See Hearing Record.

### Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint. See 6 NYCRR 622.4(a). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing." 6 NYCRR 622.15(a). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, "and failure to attend constitutes a default and a waiver of the opportunity for a hearing." 6 NYCRR 622.8(c); see also 6 NYCRR 622.15(a) ("A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and a waiver of respondent's right to a hearing").

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to appear or to file a timely answer; and (iii) a proposed order. See 6 NYCRR 622.15(b)(1)-(3).

As the Commissioner has held, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them." Matter

of Alvin Hunt, d/b/a Our Cleaners, Decision and Order of the Commissioner, July 25, 2006, at 6 (citations omitted). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim.” Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3.

In this case, Department staff’s proof presents a prima facie case demonstrating that respondent failed to renew the registration of its petroleum bulk storage facility located at 500 Brightwater Court, Brooklyn, New York on or before July 7, 2012, the date that the prior registration expired, in violation of ECL 17-1009. Respondent was in violation of 6 NYCRR 613-1.9(c) from the effective date of part 613, October 11, 2015.

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint and failed to appear at a pre-hearing conference scheduled for March 24, 2016, as directed in the cover letter served with the notice of hearing and complaint; and (iii) respondent failed to appear for the adjudicatory hearing scheduled in the matter on April 26, 2016 and reconvened on July 21, 2016, as directed in the notices of hearing. Department staff provided its proposed order at the July 21, 2016 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 bulk storage facility located at 500 Brightwater Court, Brooklyn, New York on or before July 7, 2012, the date that the prior registration expired, in violation of ECL 17-1009 and 6 NYCRR 613-1.9(c). The Department is entitled to judgment upon the facts proven.

At the July 21, 2016 hearing, Department staff noted that the civil penalty requested of ten thousand dollars (\$10,000) deviates from the administrative precedent establishing a civil penalty of seven thousand five hundred dollars (\$7,500) for failing to register a facility for more than two years but less than five years. See e.g. Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2. Staff explained that the proposed order seeks a civil penalty of ten thousand dollars (\$10,000) rather than seven thousand five hundred dollars (\$7,500) because the spill of up to 1,000 gallons of petroleum and the required removal of thirty-five tons of petroleum contaminated soil were aggravating factors that must be considered when establishing the appropriate penalty. Staff explained that maintaining an accurate and current registration for PBS facilities helps ensure that owners comply with applicable regulatory requirements and prevent spills from occurring. In this instance, the registration for respondent’s facility expired approximately one and a half years before a spill occurred and respondent’s 10,000 gallon underground PBS tank was overdue for a tightness test. See Finding of Fact No. 9; Staff exhibit 6b.

In addition to discussing appropriate penalties based on the duration of the violation, the Commissioner, in the Matter of 12 Martense Associates, LLC, also stated that mitigating or aggravating factors must be considered in determining an appropriate penalty. See Matter of 12 Martense Associates LLC, supra, at 2. Staff’s requested civil penalty, taking into consideration

the aggravating factors, is consistent with the Department's penalty policy as well as applicable provisions of ECL article 71 and administrative precedent.

Recommendation

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

1. Granting Department staff's motion for default, holding respondent Brighton House, Inc. in default pursuant to the provisions of 6 NYCRR 622.15;
2. Holding that, based upon the proof adduced at the adjudicatory hearing, respondent Brighton House, Inc. violated ECL 17-1009 and since October 11, 2015 violated 6 NYCRR 613-1.9(c) by failing to renew the registration of its petroleum bulk storage facility located at 500 Brightwater Court, Brooklyn, New York on or before July 7, 2012, the date that the prior registration expired;
3. Directing respondent Brighton House, Inc. to submit to the Department, within fifteen (15) days of service of the Commissioner's order, a complete registration application for the facility, together with the applicable registration fees;
4. Directing respondent Brighton House Inc. to pay a civil penalty in the amount of ten thousand dollars (\$10,000) 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 appropriate.

\_\_\_\_\_/s/\_\_\_\_\_  
Michael S. Caruso  
Administrative Law Judge

Dated: Albany, New York  
August 3, 2016

**EXHIBIT CHART – PBS EXPEDITED PROCEEDINGS**

*Matter of Brighton House, Inc.*  
 500 Brightwater Court, Brooklyn, New York 11235 – DEC Case No. PBS.2-239968.4.2016  
 July 21, 2016 – Central Office  
 EDIROL File Nos. 021229071858 and 021229074837

| Exhibit No. | Description  | ID'd? | Rec'd ? | Offered By       | Notes |
|-------------|--|-------|---------|------------------|-------|
| 1           | May 25, 2016 Practice Order of the Appellate Division, Third Department (Peters, P.J.), for appointment of law interns, including, Linnea E. Riegel.   | ✓     | ✓       | Department Staff |       |
| 2           | Cover Letter from Yvonne M. Ward, Esq. to respondent, with Notice of Hearing, Complaint, and Statement of Readiness, all dated February 16, 2016 and an undated Affirmation of Yvonne M. Ward. | ✓     | ✓       | Department Staff |       |
| 3           | Affidavit of Service of Dale Thiel, sworn to July 7, 2016 with New York State Department of State Receipt for Service dated February 16, 2016.   | ✓     | ✓       | Department Staff |       |
| 4           | NYS Department of State Entity Information, current through June 8, 2016.  | ✓     | ✓       | Department Staff |       |

| Exhibit No. | Description   | ID'd? | Rec'd ? | Offered By       | Notes |
|-------------|---|-------|---------|------------------|-------|
| 5           | New York City Department of Finance, ACRIS Title Search, dated July 18, 2016 and deed to respondent, dated July 25, 1966.   | ✓     | ✓       | Department Staff |       |
| 6A          | PBS Application, dated March 12, 2007 returned to applicant on March 21, 2007 and PBS Application resubmitted and received on April 6, 2007.                          | ✓     | ✓       | Department Staff |       |
| 6B          | Affidavit of Ryan Piper, sworn to July 18, 2016 with New York State Department of Environmental Conservation Spill Report Form and attachments printed July 18, 2016. | ✓     | ✓       | Department Staff |       |
| 7           | PBS Registration Certificate issued April 11, 2007, expiration date July 7, 2012.   | ✓     | ✓       | Department Staff |       |
| 8           | PBS Program Facility Information Report, printed July 5, 2016.  | ✓     | ✓       | Department Staff |       |
| 9           | Affirmation of attempted contact by Yvonne M. Ward, dated July 20, 2016.  | ✓     | ✓       | Department Staff |       |
| 10          | Proposed Order.   | ✓     | ✓       | Department Staff |       |