

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

In the Matter of the Alleged Violation of
Article 17 of the Environmental Conservation
Law of the State of New York and Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State
of New York ("NYCRR"), by:

Ruling

DEC Case No.
2-1030826

BRONX READY MIX CONCRETE/GALWAY REALTY CO.

Respondent.

Proceedings

By notice of motion dated July 2, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against respondents Bronx Ready Mix Concrete ("Bronx") and Galway Realty Co. ("Galway") concerning alleged violations of the Article 17 of the Environmental Conservation Law ("ECL"). DEC Staff identifies the named respondents as one respondent in the default motion and supporting affirmation with no further explanation. It is alleged by DEC that Bronx and Galway violated Article 17 of the ECL by failing to register a petroleum bulk storage facility at 265 West Fordham Rd. Bronx, N.Y. In support of its motion, DEC submitted an affirmation of Associate Attorney Benjamin A. Conlon and a proposed order. Also, DEC staff submitted a certified mail return receipt showing receipt of a notice of hearing and complaint on May 4, 2004 by an unknown person. The certified mail return receipt is addressed to both Bronx and Galway, at the same address, but does not identify who received the mailing. The notice of hearing and complaint that DEC Staff alleges commenced this action names only Bronx as a respondent.

As of the date of the motion, respondent Bronx has failed to appear and serve an answer or otherwise move. The affirmation of attorney Conlon indicates that respondent Bronx failed to appear for a pre-hearing conference that was noticed in the notice of hearing and complaint.

Default Procedures

6 NYCRR 622.15, "Default Procedures" provides, in pertinent part: (b) The motion for a 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."

Ruling

DEC Staff has not established that respondent Bronx was served with the notice of hearing and complaint and therefore, the requirements for a default judgment have not been met with respect to that respondent. As to respondent Galway, there was no underlying action commenced against them that would be the prerequisite to the default motion. The motion is denied.

DATED: July 30, 2004
Albany, New York

/s/

Molly T. McBride
Administrative Law Judge

To: Benjamin A. Conlon, Esq.
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