

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

In the Matter of the Alleged Violations of Articles 15, 17, and 27 of the Environmental Conservation Law and Parts 360, 596, 598, 612, 613 and 614 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York

ORDER

DEC File No.
R6-20030802-53

- by -

**B&W AUTO PARTS, INC., a/k/a B&W
AUTO PARTS SALES & SERVICE, INC.,
VASILEY KOROGODA, and ZHANNA
KOROGODA,**

Respondents.

Pursuant to a notice of hearing and complaint dated June 15, 2004, the New York State Department of Environmental Conservation ("Department") staff commenced an administrative enforcement proceeding against respondents B&W Auto Parts, Inc., a/k/a B&W Auto Parts Sales & Service, Inc., Vasiley Korogoda and Zhanna Korogoda ("respondents").

Respondents were each served with a notice of hearing and complaint on June 16, 2004. Service of process was accomplished in accordance with 6 NYCRR 622.3.

The complaint alleged that respondents operate an inactive domestic business corporation that is no longer registered with the New York State Department of State, doing business as an automobile dismantler in the State of New York, with main offices located at 68 Barnes Avenue, Utica, Oneida County, New York 13502. Respondents Vasiley Korogoda and Zhanna Korogoda are allegedly the current operators of the business. The complaint also alleges that respondents own and operate a petroleum bulk storage ("PBS") facility and a chemical bulk storage ("CBS") facility at B&W Auto Sales & Service, Inc., 68 Barnes Avenue, Town of Marcy, Oneida County, New York (the "facility"). According to Department records, the facility has three active, aboveground, used oil storage tanks: PBS Tank #1 (150 gallons), PBS Tank #2 (330 gallons), and PBS Tank #3 (330

gallons). The facility was last registered (PBS# 6-600687) with the Department on September 17, 1997. The facility has one active, aboveground chemical bulk storage tank, CBS Tank #1 (275 gallons), which has a capacity greater than 185 gallons. CBS Tank #1 contains ethylene glycol (antifreeze), CAS# 107-21-1, a hazardous substance listed in 6 NYCRR 597.2.

The complaint alleges that respondents:

- a. violated 6 NYCRR 612.2(b) by failing to re-register the facility within 30 days of ownership transfer;
- b. violated 6 NYCRR 612.2(e) by failing to post a current and valid PBS registration certificate;
- c. violated 6 NYCRR 613.3(c)(3) by failing to equip PBS Tanks #1, #2 and #3 with gauges or appropriate overfill protection;
- d. violated 6 NYCRR 613.3(c)(3)(ii) by failing to appropriately label PBS Tanks #1, #2 and #3;
- e. violated 6 NYCRR 613.3(c)(6)(i) by failing to provide secondary containment systems for PBS Tanks #1, #2 and #3;
- f. violated 6 NYCRR 613.6(a) and (c) by failing to inspect the facility monthly;
- g. violated 6 NYCRR 613.8 by failing to report a spill;
- h. violated 6 NYCRR 614.9(c) by failing to properly paint Tank #3;
- i. violated 6 NYCRR 596.2(a)(1) by failing to register CBS Tank #1, a 275-gallon CBS (ethylene glycol) Tank, with the Department;
- j. violated 6 NYCRR 596.2(g) by failing to post a valid and current CBS registration certificate;
- k. violated 6 NYCRR 598.1(k)(1) by failing to prepare and maintain a Spill Prevention Report (SPR);
- l. violated 6 NYCRR 598.4(b)(8) by failing to label open and closed positions of the valves and controllers, which govern the filling and emptying of CBS Tank #1;

m. violated 6 NYCRR 598.5(c)(1) by failing to provide secondary containment for CBS Tank #1;

n. violated 6 NYCRR 599.17(b)(1)(i) by failing to provide CBS Tank #1 with overflow protection equipment;

o. violated 6 NYCRR 599.17(b)(1)(iii) by failing to provide CBS Tank #1 with a level gauge and failing to properly label CBS Tank #1 at the level gauge;

p. violated ECL 27-1701(3)(a) by disposing of lead-acid batteries at an unauthorized site;

q. violated 6 NYCRR 360-1.5(a)(2) by disposing of solid waste at a site other than a solid waste facility authorized to accept such waste;

r. violated 6 NYCRR 360-1.7(a)(1)(i) and 360-13.1 by operating a solid waste management facility engaged in the storage of more than 1,000 waste tires without a permit;

s. violated 6 NYCRR 360-12.1(c) by failing to submit to the Department an annual waste disposal report for calendar years 2000, 2001, 2002 and 2003;

t. violated 6 NYCRR 360-14.3(h) by failing to properly label used oil tanks;

u. violated 6 NYCRR 360-14.1(c)(2) by disposing of used oil in an improper manner;

v. violated ECL 15-0505 by placing fill below the mean high water level of the Mohawk River, a navigable water of the State, without a permit; and

w. violated title 7 and title 8 of ECL article 17 by failing to apply for and obtain a State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges Associated with Industrial Activity except Construction Activity.

Pursuant to 6 NYCRR 622.4(a), respondents' time for serving an answer to the complaint expired on July 6, 2004. Respondents have failed to serve an answer to the complaint. Respondents also failed to appear at a pre-hearing conference scheduled for Wednesday, July 14, 2004, at 10:00 a.m.

On August 5, 2004, Department staff filed a motion for a default judgment with the Office of Hearings and Mediation Services. The motion detailed respondents' failure to answer or appear. The motion was also mailed to respondents.

The matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride. The ALJ's default summary report, which is attached, is adopted as my decision in this matter subject to the comments in this order.

The civil penalty sought by Department staff in its motion falls well within the maximum penalty authorized by statute, and is justified under the circumstances of this case including, but not limited to, the number of violations, respondents' knowledge of the violations, and respondents' failure to perform corrective action or respond to Department staff's requests.

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.

II. Respondents are adjudged to be in default. As a consequence, respondents are deemed to have admitted the factual allegations in the complaint and to have waived their right to a hearing on the issue of liability in this enforcement proceeding.

III. Respondents are adjudged to have violated the provisions of ECL articles 15, 17, and 27, and 6 NYCRR parts 360, 596, 598, 599, 612, 613, and 614 alleged in the complaint.

IV. Respondents shall pay a civil penalty in the amount of one hundred ninety-two thousand three hundred dollars (\$192,300), with one hundred twenty-two thousand three hundred dollars (\$122,300) suspended if respondents perform corrective actions that are set out in paragraph "V" below, and the obligation to pay the civil penalty, among and between respondents, shall be joint and several. No later than 30 days after the date of this order, payment of seventy thousand dollars (\$70,000) 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 delivered to the Department at the following address: 317 Washington Street, Watertown, NY 13601 Attn: Regional Attorney. In the event that respondents fail to fully comply with the requirements of this order in a timely fashion, the entire suspended portion of the penalty shall become

due and payable upon written notice to respondents without prejudicing the Department from seeking further appropriate penalties for violations of this order by respondents. Payment of the above penalties shall not in any way alter respondents' obligation to complete performance under the terms of this order.

V. Respondents shall perform the following:

1. Petroleum Bulk Storage Regulations:

Within thirty (30) days of the effective date of this Order:

- a. Register the facility per 6 NYCRR 612.
- b. Post a current and valid registration certificate per 6 NYCRR 612.2(e).
- c. Equip PBS Tanks #1, #2 and #3 with gauges or appropriate overfill protection per 6 NYCRR 613.3(c)(3).
- d. Label PBS Tanks #1, #2 and #3 per 6 NYCRR 613.3(c)(3)(ii).
- e. Provide secondary containment systems for PBS Tanks #1, #2 and #3 per 6 NYCRR 613.3(c)(6).
- f. Commence monthly inspections of aboveground PBS Tanks #1, #2 and #3 and maintain reports per 6 NYCRR 613.6(a) and (c).
- g. Paint PBS Tank #3 per 6 NYCRR 614.9(c).
- h. Submit a site assessment report of the facility identifying the exact locations of all spills at the facility. The report must include an approvable remediation plan and implementation schedule. Upon Department approval, the report shall be attached and become an enforceable part of this order.

2. Chemical Bulk Storage Regulations:

Within thirty (30) days of the effective date of this order:

- a. Register CBS Tank #1 per 6 NYCRR 596.2(a)(1).
- b. Post a current and valid registration certificate per 6 NYCRR 596.2(g).
- c. Prepare and maintain a Spill Prevention Report per 6 NYCRR 598.1(k)(1).
- d. Label open and closed positions of the valves and controllers of CBS Tank #1 per 6 NYCRR 598.4(b)(8).
- e. Provide secondary containment for CBS Tank #1 per 6 NYCRR 598.5(c)(1).

- f. Provide CBS Tank #1 with overflow protection equipment per 6 NYCRR 599.17(b)(1)(i).
- g. Provide CBS Tank #1 with a level gauge, then properly label this tank at the level gauge per 6 NYCRR 599.17(b)(1)(iii).

3. Solid Waste Regulations:

Within thirty (30) days of the effective date of this Order:

- a. Collect and store all lead-acid batteries in an environmentally secure manner to comply with ECL 27-1701(3)(a).
- b. Collect and properly dispose of all illegal solid waste per 6 NYCRR 360-1.5(a)(2). Provide the Department with copies of disposal receipts.
- c. Reduce the waste tires currently buried or stored on site to a level below 1,000 waste tires per 6 NYCRR 360-13.1(b). Store remaining tires in a central location at the facility as far away from the Mohawk River as possible. Submit to the Department disposal receipts.
- d. Submit to the Department annual waste disposal reports for calendar years 2000, 2001, 2002, and 2003 per 6 NYCRR 360-12.1(c).
- e. Label used oil tanks with the capacity of the tank and the words "USED OIL" per 6 NYCRR 360-14.3(h).

4. Water Resources Regulations:

Within thirty (30) days of the effective date of this order, submit an approvable plan to remove unauthorized fill placed below the mean high water level of the Mohawk River. This plan must include an implementation schedule. Upon Department approval, the plan shall be attached and become an enforceable part of this order.

5. Water Regulations:

- a. Within thirty (30) days of the effective date of this order, provide the Department with the name of a consultant who will complete the facility's Stormwater Pollution Prevention Plan (SWPPP), and a binding

contract or agreement between respondents and consultant for development of the SWPPP.

- b. Within sixty (60) days of the effective date of this order, submit to the Department a Notice of Intent, Transfer or Termination (NOITT) for coverage under the State's SPDES General Permit for Storm Water Discharges. Complete a Storm Water Pollution Prevention Plan providing for compliance with the General Permit on or before submission of the NOITT per titles 7 and 8 of ECL article 17.

VI. All communications between respondents and Department staff concerning this order shall be made to:

Regarding PBS and CBS regulations:

NYSDEC
Donald I. Johnson
Regional PBS and CBS Engineer
207 Genesee Street
Utica, NY 13501-2885

Regarding Solid Waste regulations:

NYSDEC
Robert J. Senior
Environmental Engineer
207 Genesee Street
Utica, NY 13501-2885

Regarding Water regulations:

NYSDEC
Julius Fuks
Environmental Engineer
207 Genesee Street
Utica, NY 13501-2885

A copy of any correspondence shall be sent to:

NYSDEC
James T. King, Esq.
Regional Attorney
317 Washington Street
Watertown, NY 13601-3787

VII. The provisions, terms and conditions of this order shall bind respondents and respondents' heirs, successors and assigns, in any and all capacities.

FOR THE NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

By: _____/s/_____
Erin M. Crotty, Commissioner

Dated: Albany, New York
December 10, 2004

TO: (via Certified Mail)
B&W Auto Parts, Inc.
a/k/a B&W Auto Parts Sales & Service, Inc.
68 Barnes Avenue
Utica, New York 13501

(via Certified Mail)
Vasiley Korogoda
68 Barnes Avenue
Utica, New York 13501

(via Certified Mail)
Zhanna Korogoda
68 Barnes Avenue
Utica, New York 13501

(via Certified Mail)
Peter S. Palewski, Esq.
1 Campbell Avenue
New York Mills, New York 13417

(via Regular Mail)
NYSDEC
James T. King, Esq.
Regional Attorney
317 Washington Street
Watertown, New York 13601-3787

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

In the Matter of the Alleged Violations of
Articles 15, 17, and 27 of the Environmental
Conservation Law ("ECL") of the State of New
York and Parts 360, 596, 598, 612, 613 and
614 of Title 6 of the Official Compilation
of Codes, Rules and Regulations (6 NYCRR)
of the State of New York by:

Default Summary Report
R6-20030802-53

B&W AUTO PARTS, INC.
A/K/A B&W AUTO PARTS SALES
& SERVICE, INC.,
VASILEY KOROGODA,
ZHANNA KOROGODA

Respondents.

PROCEEDINGS

By motion dated August 5, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against respondents concerning alleged violations of Articles 15, 17 and 27 of the Environmental Conservation Law ("ECL"). In support of its motion, DEC staff submitted an affirmation of Regional Attorney James T. King, a proposed judgment and order and proof of service of the notice of hearing and complaint on the respondents, by certified mail, return receipt on June 15, 2004.

As of the date of the motion, respondents have failed to appear and serve an answer or otherwise move, although the time to do so expired on July 6, 2004. Further, DEC Staff submitted proof that said notice of hearing and complaint directed respondents to appear for a pre-hearing conference. The affirmation of attorney King indicates that respondents failed to appear at said conference and did not obtain, nor request an adjournment of the conference.

Staff mailed a copy of the motion for default judgment to the respondents on August 6, 2004. Respondents' counsel made a written request for an extension of time to reply to the default motion in a letter received by the DEC Office of Hearings on November 3, 2004. This request was made well after the period of time to respond to the motion and it was denied by Administrative Law Judge Molly T. McBride by letter dated November 8, 2004. No reason was given in counsel's letter as to why a timely response

to either the notice of hearing and complaint or the default motion was not made.

DEFAULT PROCEDURES

Section 622.15 of 6 NYCRR, "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."

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

FINDINGS

1. On June 15, 2004 staff served a notice of hearing and complaint on respondents. The time to answer or otherwise move expired on July 6, 2004. No answer has been served to date.
2. The notice of hearing and complaint directed respondents to appear for a pre-hearing conference on July 14, 2004. No appearance was made by respondents at said conference.
3. Respondents have violated the following:
 - (a) 6 NYCRR 612.2(b) by failing to re-register within 30 days of ownership transfer;
 - (b) 6 NYCRR 612.2(e) by failing to post a current and valid PBS registration certificate;
 - (c) 6 NYCRR 613.3(c)(3)(i) & (iii) by failing to equip PBS Tanks #1, #2 and #3 with gauges or appropriate overfill protection;
 - (d) 6 NYCRR 613.3(c)(3)(ii) by failing to appropriately label PBS Tanks #1, #2 and #3;
 - (e) 6 NYCRR 613.3(c)(6)(i) by failing to provide secondary containment systems for PBS Tanks #1, #2 and #3;
 - (f) 6 NYCRR 613.6(a) and (c) by failing to inspect the facility monthly;
 - (g) 6 NYCRR 613.8 by failing to report a spill;
 - (h) 6 NYCRR 614.9(c) by failing to properly paint Tank #3;

(i) 6 NYCRR 596.2(a)(1) by failing to register CBS Tank #1, a 275-gallon CBS (ethylene glycol) tank, with the Department;

(j) 6 NYCRR 596.2(g) by failing to post a valid and current CBS registration certificate;

(k) 6 NYCRR 598.1(k)(1) by failing to prepare and maintain a Spill Prevention Report (SPR);

(l) 6 NYCRR 598.4(b)(8) by failing to label open and closed positions of the valves and controllers, which govern the filling and emptying of CBS Tank #1;

(m) 6 NYCRR 598.5(c)(1) by failing to provide secondary containment for CBS Tank #1;

(n) 6 NYCRR 599.17(b)(1)(i) by failing to provide CBS Tank #1 with overflow protection equipment;

(o) 6 NYCRR 599.17(b)(1)(iii) by failing to provide CBS Tank #1 with a level gauge and failing to properly label CBS Tank #1 at the level gauge;

(p) ECL 27-1701(3)(a) by disposing of lead-acid batteries at an unauthorized site;

(q) 6 NYCRR 360-1.5(a)(2) by disposing of solid waste at a site other than a solid waste facility authorized to accept such waste;

(r) violated 6 NYCRR 360-1.7(a)(1)(i) and 360-13.1 by operating a solid waste management facility engaged in the storage of more than 1,000 waste tires without a permit;

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(t) violated 6 NYCRR 360-14.3(h) by failing to properly label used oil tanks;

(u) violated 6 NYCRR 360-14.1(c)(2) by disposing of used oil in an improper manner;

(v) violated ECL 15-0505 by placing fill below the mean high water level of the Mohawk River, a navigable water of the State, without a permit; and

(w) violated title 7 and title 8 of ECL article 17 by failing to apply for and obtain a State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges Associated with Industrial Activity except Construction Activity.

4. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR 622.15(b). Further, the penalties requested by Department Staff are adequately supported by the record before me.

CONCLUSION

The motion for default judgment should be granted as well as the penalties sought by Staff.

DATED: November 29, 2004
Albany, New York

_____/s/_____
Molly T. McBride
Administrative Law Judge

To: B&W Auto Parts, Inc.
A/K/A/ B&W Auto Parts, Sales & Service, Inc.
Vasiley Korogoda
Zhanna Korogoda
68 Barnes Avenue
Utica, NY 13501

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