

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

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In the Matter of the Alleged Violation  
of Article 17 of the New York State  
Environmental Conservation Law (ECL)  
and Parts 612 and 613 of Title 6  
of the Official Compilation of Codes,  
Rules and Regulations of the State  
of New York (6 NYCRR) by

**ORDER**

Case No:01-07  
R9-20010212-6

MOHAMED FAWAZ,

Respondent.

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**WHEREAS:**

1. Pursuant to the notice of hearing and complaint dated April 15, 2003, and April 16, 2003, respectively, the staff of the New York State Department of Environmental Conservation ("Department") commenced an administrative enforcement proceeding against Mohamed Fawaz ("respondent").
2. Respondent was served with the notice of hearing and complaint on May 27, 2003.
3. Service of process was accomplished in accordance with 6 NYCRR 622.3(a)(3).
4. Respondent's time for service of an answer expired June 17, 2003, and was not extended by consent of Department staff.
5. Department staff filed a motion for default judgment, dated September 12, 2003, outlining respondent's failure to answer or otherwise appear.
6. A copy of the notice of motion and supporting papers seeking judgment by default was filed with the Office of Hearings and Mediation Services, and the matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride. The Default Summary Report of ALJ McBride is attached, which is adopted as the decision in this matter subject to the comments in this order.
7. Pursuant to section 622.15 of title 6 of the Official

Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), respondent is hereby found to be in default and is found to have waived the right to a hearing in this enforcement proceeding. Accordingly, Department staff's allegations against respondent contained in the complaint are deemed to have been admitted by respondent.

8. Respondent is adjudged to have violated 6 NYCRR 612.2(b) by failing to re-register his facility at 608 Fillmore Avenue, Buffalo, New York within thirty (30) days of November 20, 1998, the date respondent became the owner of the facility.
9. Respondent is adjudged to have violated ECL 17-1005 and 6 NYCRR 613.5 by failing to conduct tank tightness testing on the three 6,000-gallon underground bulk storage tanks at his facility at 608 Fillmore Avenue, Buffalo, New York.

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

- I. Respondent, having violated ECL 17-1005 and the above-referenced sections of 6 NYCRR parts 612 and 613, is hereby assessed a civil penalty in the amount of fifteen thousand dollars (\$15,000). The civil penalty is due and payable within thirty (30) days of service of a copy of this order upon respondent. Payment shall be made in the form of a cashiers 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: Regional Director, Region 9, NYSDEC, 270 Michigan Avenue, Buffalo, NY 14203-2999.
- II. Within thirty (30) days of the effective date of this order, respondent shall either: (a) conduct tightness testing on each of the three 6,000-gallon underground bulk storage tanks and connecting piping systems at the facility in accordance with 6 NYCRR 613.5; or (b) permanently close the tanks and connecting systems in accordance with 6 NYCRR 613.9(b), (c), (d), and (e).
- III. Respondent shall notify the Department five (5) days in advance of conducting all tightness tests and shall, within fifteen (15) days of the completion of such tests, submit a test report containing the results of such tests to the Department.
- IV. In the event that tightness testing reveals a tank is not tight, respondent shall promptly repair, replace or close that portion of the facility that failed such test, in accordance with 6 NYCRR 613.5(a)(5).

- V. In the event that tightness testing reveals that a tank is leaking, respondent shall report such leak to the Department pursuant to 6 NYCRR 613.8 within two (2) hours of discovery by calling the Spills Hotline at 1-800-457-7362 or, for out-of-state callers, (518) 457-7362.
- VI. All communications between respondent and the Department concerning this order shall be made to the Department's Region 9 director, NYSDEC, 270 Michigan Avenue, Buffalo, NY 14203-2999.
- VII. The provisions, terms and conditions of this order shall bind respondent, his successors and assigns.

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

/s/  
By: ERIN M. CROTTY, COMMISSIONER

DATED: March 16, 2004  
Albany, New York

To: Mohamed Fawaz (by certified mail)  
c/o Ali Beydoun  
6425 Barrie Street  
Dearborn, Michigan 48126

Joseph J. Hausbeck, Esq.  
NYS Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2999

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

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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 (6 NYCRR) Parts 612 and 613  
by

DEFAULT  
SUMMARY  
REPORT

MOHAMED FAWAZ

DEC File No. 01-07  
R9-20010212-691

Respondent.

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Proceedings

By Notice of Motion dated September 12, 2003 Staff of the Department of Environmental Conservation (DEC, Department) sought a judgment by default against Mohamed Fawaz (Respondent) concerning alleged violations of Article 17 of the Environmental Conservation Law (ECL). It is alleged by DEC Staff that Respondent violated ECL §17-1005 and 6 NYCRR 612.2(b) & 613.5 by failing to re-register his petroleum bulk storage and conduct required tank tightness testing at the facility located at 608 Fillmore Avenue, Buffalo, New York.

In support of its motion, DEC submitted an affirmation of Assistant Regional Attorney Joseph Hausbeck, Esq. dated September 12, 2003 and a proposed Order. Attempts to serve the Respondent with the motion for default failed when the mailing was returned by the US Post Office with a notation that the mailing was "unclaimed".

Respondent was served with a Notice of Hearing and Complaint dated April 16, 2003. These documents were properly served on May 27, 2003, as evidenced by the certified mail return receipt card attached to DEC Staff's motion for default.

As of the date of the default motion, Respondent has failed to appear or answer the Notice of Hearing and Complaint or otherwise move.

**DEFAULT PROCEDURES:**

Section 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."

## FINDINGS

8. On May 27, 2003 DEC Staff served a Notice of Hearing and Complaint on Respondent Mohamed Fawaz. The time to Answer or otherwise move expired on June 17, 2003. No Answer has been served to date. The Motion included a statement that failure to answer constitutes a default.
9. On September 12, 2003 DEC Staff attempted to serve a Notice of Motion for Default Judgment on Respondent. The mailing was returned by the US Post Office as unclaimed.
3. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR section 622.15(b).

## RECOMMENDATION

The motion for default judgment should be granted. This Summary Report and Staff's proposed Order can be referred to the Commissioner for final determination.

\_\_\_\_\_/s/\_\_\_\_\_  
Molly T. McBride  
Administrative Law Judge

Dated: Albany, New York  
February 6, 2004

To: Joseph Hausbeck, Esq.  
NYS Department of Environmental Conservation  
Region 9 Office  
270 Michigan Avenue  
Buffalo, New York 14203-2999

Mohamed Fawaz  
c/o Ali Beydoun  
6425 Barrie Street  
Dearborn, Michigan 48126