

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

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In the Matter of the Alleged Violations of Article 19 of the Environmental Conservation Law ("ECL") and Part 232<sup>1</sup> of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

**ORDER**

DEC Case No. 07-09  
R9-20070212-10

- by -

**GREGORY FISHER,**

Respondent.

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Respondent Gregory Fisher owns and operates a dry cleaning facility at 4081 North Buffalo Street, Orchard Park, New York (Orchard Park facility) and a dry cleaning facility at 141 Buffalo Street, Hamburg, New York (Hamburg facility). This proceeding addresses violations of State regulations governing dry cleaning establishments.

Staff of the New York State Department of Environmental Conservation (Department) commenced this administrative enforcement proceeding against respondent Gregory Fisher by service of a notice of hearing and complaint dated July 2, 2007.

In accordance with 6 NYCRR 622.3(a)(3), respondent was personally served with a copy of the notice of hearing and complaint on July 25, 2007 at the Orchard Park facility (see Affidavit of Personal Service, sworn to by Environmental Conservation Officer Scott L. Marshall on July 25, 2007).

The complaint alleged that respondent:

- 1) violated 6 NYCRR 232.16, by failing to have the required third-party inspection performed at the Orchard Park facility and the Hamburg facility in 2006;

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<sup>1</sup> While Department staff's caption cited part 632 of 6 NYCRR, the remainder of the complaint references 6 NYCRR part 232. It is apparent that the reference in the caption was a typographical error. In this order and the default summary report, the reference has been corrected to read part 232.

- 2) violated 6 NYCRR 232.15(a), by modifying the Orchard Park facility and the Hamburg facility without obtaining the appropriate permit and approval from the Department in accordance with 6 NYCRR part 201 before commencing construction or installation; and
- 3) violated 6 NYCRR 232.4(e) and 232.15(a), by operating the Orchard Park facility without a valid air facility registration.<sup>2</sup>

The complaint sought a civil penalty in an amount "not to exceed the statutory maximum" (Complaint, at 3).

Respondent failed to file an answer to the complaint. Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint expired on August 14, 2007. That deadline was not extended by Department staff.

Department staff filed a notice of motion and motion for default judgment, dated April 17, 2008, with the Department's Office of Hearings and Mediation Services. Department staff also copied respondent on the motion for default judgment.

In its motion, Department staff requested that a civil penalty of fifteen thousand dollars (\$15,000) be imposed upon respondent, stating that the penalty is within the range authorized by ECL 71-2103, which establishes the penalty for violations of ECL article 19 and its implementing regulations (see Affirmation in Support of Motion for Default Judgment and Order of Assistant Regional Attorney Karen J. Draves dated April 17, 2008, ¶¶ 14-15; see also Affidavit in Respect to the Penalty Sought in [the] Motion for Default Judgment of Assistant Regional Attorney Karen J. Draves dated April 17, 2008 [addressing respondent's violations of ECL article 19 and its implementing regulations and calculating the penalty in consideration of ECL 71-2103 and the Department's Civil Penalty Policy (Commissioner Policy DEE-1, June 20, 1990)]).

The matter was assigned to Administrative Law Judge ("ALJ") Molly McBride, who prepared the attached summary report. I adopt the ALJ's report as my decision in this matter, subject to the following comments.

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<sup>2</sup> The complaint includes all three violations under the heading "First Cause of Action" (see Complaint, at 2, ¶¶ 10, 11 and 12).

The procedures that govern an ALJ's review of a motion for default judgment are set forth in Matter of Alvin Hunt, Decision and Order of the Commissioner, July 25, 2006 (Hunt). The ALJ examines, among other things, the proof of service upon the respondent of the notice of hearing and complaint or such other charging instrument that commenced the proceeding and proof of respondent's failure to appear or failure to file a timely answer (see id., at 4).

Once it is concluded that the aforementioned requirements have been satisfied, consideration is given to whether the complaint or charging instrument states a claim upon which relief may be granted (see id.). In this proceeding, Department staff specifically cited violations of 6 NYCRR 232.4(e) (operating the Orchard Park facility without a valid air facility registration), 232.15(a) (modifying the Orchard Park and Hamburg facilities without obtaining appropriate authorization and operating the Orchard Park facility without a valid air facility registration), and 232.16 (failing to have the required third-party inspection performed at the two facilities).

As noted, with respect to the charge regarding the failure of the Orchard Park facility to have a valid air facility registration, Department staff cited 6 NYCRR 232.4(e) and 232.15(a). The basis for citing 6 NYCRR 232.15(a), in addition to 6 NYCRR 232.4(e), for the operation of the facility without a valid air facility registration in this proceeding is unclear. Accordingly, I am only finding a violation of 6 NYCRR 232.4(e) for that count. Respondent did violate 6 NYCRR 232.15(a) when he modified the Orchard Park (and Hamburg) facilities without obtaining the appropriate authorization.

The ALJ must also examine whether the penalty and any remedial measures sought by staff are warranted and sufficiently supported (see Hunt, at 4-5, 8-9). In this proceeding, Department staff proposed a penalty that is within the statutorily authorized maximum, and has evaluated the penalty in terms of the benefit and gravity components of the Civil Penalty Policy (see Affidavit in Respect to the Penalty Sought in [the] Motion for Default Judgment of Assistant Regional Attorney Karen J. Draves dated April 17, 2008). Based upon the record, I conclude that the proposed civil penalty requested by Department staff and recommended by the ALJ is appropriate. I note that no specific remedial measures were requested by Department staff in this proceeding.

**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 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:

- A) 6 NYCRR 232.16, by failing to have the required third-party inspection performed at the Orchard Park facility and the Hamburg facility in 2006;
- B) 6 NYCRR 232.15(a), by modifying the Orchard Park facility and the Hamburg facility without obtaining the appropriate authorization from the Department in accordance with 6 NYCRR part 201 before commencing construction or installation; and
- C) 6 NYCRR 232.4(e), by operating the Orchard Park facility without a valid air facility registration.

IV. Respondent Gregory Fisher is hereby assessed a civil penalty in the amount of fifteen thousand dollars (\$15,000). The civil penalty shall be due and payable within thirty (30) 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:

Maureen Brady, Esq.  
Regional Attorney  
New York State Department  
of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203

V. All communications from respondent to the Department concerning this order shall be made to:

Karen J. Draves, Esq.  
Assistant Regional Attorney  
New York State Department  
of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203

VI. The provisions, terms and conditions of this order shall bind respondent Gregory Fisher, and his agents, successors and assigns, in any and all capacities.

For the New York State Department of  
Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Alexander B. Grannis  
Commissioner

Dated: June 23, 2010  
Albany, New York

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

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In the Matter of the Alleged Violations of  
Article 19 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), Part 232,

Default  
Summary Report

- by -

DEC Case No. 07-09  
R9-20070212-10

GREGORY FISHER,

Respondent.

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By notice of motion dated April 17, 2008, staff of the Department of Environmental Conservation (DEC or Department) sought a judgment by default against respondent concerning alleged violations of the Article 19 of Environmental Conservation Law (ECL) and its implementing regulations. It is alleged by Department Staff that respondent violated Article 19 of the ECL at two dry cleaning facilities owned by him and located at 4081 North Buffalo Street, Orchard Park, New York and 141 Buffalo Street, Hamburg, New York (facilities) by: (1) failing to have a required third party inspection performed at the two facilities; (2) modifying the facilities without the appropriate permits and approval from the Department; (3) operating the facilities without a valid air facility registration. In support of its motion, DEC submitted an affirmation of Assistant Regional Attorney Karen J. Draves, a proposed order and proof of service of the notice of hearing and complaint on the respondent on July 25, 2007.

As of the date of the motion, respondent has failed to appear and serve an answer or otherwise move, and the time to do so expired on August 14, 2007.

**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."

The following Findings of Fact are based upon the papers submitted, as identified above.

## FINDINGS OF FACT

1. On July 25, 2007, Department Staff served a notice of hearing and complaint on respondent. The respondent has not answered the complaint or otherwise appeared in the action.
2. Respondent owns and operates two co-located dry cleaning facilities as defined at 6 NYCRR 232.2(b)(8) located at 141 Buffalo Street, Hamburg, New York and 4081 N. Buffalo Street, Orchard Park, New York.
3. Respondent has failed to comply with the requirements set forth in 6 NYCRR Part 232.16, 232.15, and 232.4(e), by
  - (a) failing to have third-party inspections completed at his dry cleaning facilities;
  - (b) commencing construction and/or installation at dry cleaning facilities without approvals or permits from the DEC; and
  - (c) operating dry cleaning facilities without a valid air facility registration for a period of almost six (6) months.
4. The motion for default judgment included a penalty calculation in the affidavit of Karen J. Draves, assistant regional attorney. The motion also included a proposed order.
5. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR Part 622.15(b).

## CONCLUSION

1. The penalty sought by DEC Staff for the three violations described in the complaint, fifteen thousand dollars (\$15,000.00), is authorized by ECL section 71-2103.
2. The motion for default judgment should be granted.

DATED: June 15, 2010  
Albany, New York

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