STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 25 of the New York State Environmental Conservation Law ("ECL"), and Part 661 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

- by -

JANICE GROSSMAN and MYLES GROSSMAN,

Respondents.

RULING ON MOTION FOR DEFAULT AND MOTION FOR ORDER WITHOUT HEARING

File No. R1-20150611-70

Proceedings

By notice of hearing and verified complaint dated August 6, 2015, Staff of the New York State Department of Environmental Conservation ("Department Staff") commenced this enforcement proceeding against respondents Janice and Myles Grossman ("respondents") for alleged violations of ECL Article 25 and Part 661 of 6 NYCRR at respondents' property located at 3324 Judith Drive, Bellmore, Nassau County, New York. Staff served the notice of hearing and complaint on respondent by certified mail on August 6, 2015.

The notice of hearing advised respondents that a pre-hearing conference was scheduled for September 16, 2015. In a telephone call on September 10, 2015, respondents requested an adjournment of the pre-hearing conference, and Department Staff left messages for respondents, offering a choice of four possible dates on which to reschedule the conference. Respondents did not reply to Department Staff's messages until September 16, 2015, the date the pre-hearing conference was originally scheduled, and respondents advised Department Staff that they would not appear for the pre-hearing conference.

On or about October 8, 2015, Department Staff served a notice rescheduling the pre-hearing conference to October 20, 2015, as well as another copy of the verified complaint, and extended respondents' time to answer until October 30, 2015. The receipt for certified mail indicates that respondents received the mailing on October 10, 2015. Respondents telephoned Department Staff counsel on October 19, 2015, and stated that respondents would not be attending the pre-hearing conference scheduled for the following day. Respondents failed to appear at the pre-hearing conference, and did not answer the complaint.

On May 15, 2017, Department Staff served a notice of motion for default judgment and for an order without hearing (the "Motion"), dated May 12, 2017, on respondents by certified mail. The Motion included a Memorandum of Law in Support, as well as the affirmation of

Jennifer M. Ukeritis, Esq. (the "Ukeritis Aff."), dated May 12, 2017, the affidavit of Karen Mascio, Legal Assistant II, Region 1, sworn to May 12, 2017 (the "Mascio Aff."), and the affidavit of Andrew C. Walker, Regional Manager of the Bureau of Marine Habitat and Acting Regional Manager of the Bureau of Habitat, Region 1 (the "Walker Aff."), sworn to May 12, 2017, with exhibits.

Department Staff's motion sought an order holding that respondents violated ECL Article 25 and Part 661 of 6 NYCRR by causing or allowing the construction and installation of an overwater deck within a tidal wetland, increasing the height of a bulkhead within a tidal wetland, and by causing or allowing the reconstruction of a pre-existing boat ramp within a tidal wetland, all without a permit. Department Staff also sought a default judgment pursuant to Section 622.4 of 6 NYCRR, based upon respondents' failure to answer the complaint, and failing to appear for the two scheduled pre-hearing conferences. Department Staff requested that the Commissioner order respondents to pay a civil penalty of thirty thousand dollars ($30,000). In addition, Department Staff asked that the Commissioner order respondents to reduce the size of the overwater deck by at least seventy square feet, to a pre-existing area of no more than 225 feet; to remove an impervious stone patio in and adjacent to a tidal wetland area; and to erect a permanent fence separating the overwater deck and dock.

After requesting and receiving several adjournments, respondents replied to Department Staff's motion for default and motion for order without hearing. The response included the August 31, 2017 affirmation of Aaron Gershonowitz, Esq. (the "Gershonowitz Aff."),[1] as well as the affidavit of Myles Grossman (the "Grossman Aff."), sworn to August 30, 2017. Respondents did not dispute the facts relating to liability, but asserted that the penalty sought by Department Staff was disproportionate to the violation, and requested a hearing on the penalty.

Department Staff's motion for default judgment and for an order without hearing is granted in part with respect to respondents' liability for the violations alleged, and denied with respect to the civil penalty requested. A hearing will be held **at 10:00 a.m. on Thursday, January 24, 2019, at the Department's Region 1 office in Stony Brook,** to determine the appropriate penalty to be recommended to the Commissioner. Pursuant to Section 622.9(e) of 6 NYCRR, failure to appear at the hearing constitutes a default and a waiver of respondents' right to a hearing.

FINDINGS OF FACT

The following facts are established for all purposes in the hearing, pursuant to Section 622.12(e) of 6 NYCRR:

1. Respondents Janice and Myles Grossman own property located at 3324 Judith Drive, Bellmore, Nassau County, New York (Nassau County Tax Map Sec. 63 Block 330 Lot 47) (the "site"). Walker Aff., ¶¶ 5 and 6; Exhibit 8; Complaint, ¶ 3.

[1] In an e-mail dated November 17, 2017, Mr. Gershonowitz advised counsel for Department Staff that he no longer represented respondents.

2. The site is a residential lot, covering approximately .02 acres, with a southern boundary at East Bay. Walker Aff., ¶ 6. The site includes a two-story frame dwelling of approximately 2,025 square feet, with accessory structures and a bulkhead. Id.

3. The Official Tidal Wetland Maps for Suffolk County includes the site, designated as "SM" (Coastal Shoals, Bars, and Flats), as well as "LZ" (Littoral Zone), as defined in Sections 661.4(hh)(3) and (4) of 6 NYCRR. Walker Aff., ¶ 7.

4. The prior owner of the site obtained a permit to construct a dock. Walker Aff., ¶ 8. The permit expiration date was December 31, 1988. Id. In early 2003, Janice Grossman applied for a permit to construct new 28' x 8' float and a new six pile boat lift, but that application was withdrawn in April 2003. Id., ¶ 9.

5. While the permit application was still under review, an inspection in March of 2003 revealed the unpermitted construction of an overwater deck, structures, and a pool, all of which were in and adjacent to a regulated tidal wetland. Walker Aff., ¶ 11. A Notice of Violation was issued on May 12, 2003. Exhibit 9; Walker Aff., ¶ 10. Respondents were sent a warning letter on August 14, 2003, stipulating that a fence must be erected to separate the overwater deck from the dock. Exhibit 10; Walker Aff., ¶ 12. Respondents failed to comply with the warning letter, and another Notice of Violation was issued on April 5, 2004. Exhibit 11; Walker Aff., ¶ 13. By June 15, 2004, an acceptable fence had been installed, bringing the site into compliance. Walker Aff., ¶ 14.

6. On or about July 30, 2014, respondents applied (No. 1-2820-04591/00002) for a permit for a new 24' x 8' float and a new 27,000-pound boat lift, with four mooring piles. Exhibit 1; Walker Aff., ¶ 15. Department Staff inspected the site on September 30, 2014, and noted the following violations:

    a. *Violation of Sections 661.5(b)(49) and (57)*: Respondents allowed or caused the unpermitted reconstruction of an overwater deck that had been destroyed by multiple storm events; the deck had been expanded to approximately 295 square feet. Exhibit 2; Exhibits 12a-12c; Walker Aff., ¶¶ 15-18(a);
    b. *Violation of Section 661.5(b)(22)*: Respondents caused or allowed the unpermitted reconstruction of a bulkhead that had been destroyed by multiple storm events. Exhibit 2; Exhibits 12a, 12b, and 12d; Walker Aff., ¶ 18(b); and
    c. *Violation of Sections 661.5(b)(49) and (57)*: Respondents caused or allowed the unpermitted reconstruction of a previously existing boat ramp and float that had been destroyed by multiple storm events. Exhibit 2; Exhibits 12c, 12e, and 12f; Walker Aff., ¶ 18(c).

7. Department Staff issued a Notice of Violation dated October 7, 2014, citing respondents for the unpermitted installation of a new pool and Jacuzzi, an impervious stone patio in and adjacent to a tidal wetland area, a new ramp and float, an overwater deck with larger dimensions than the original structure, and reconstruction of

approximately two feet of a retaining wall. Exhibit 3; Walker Aff., ¶ 19; Complaint, ¶ 30.

8. Respondents participated in a conference with Department Staff, a settlement was discussed, and an Order on Consent was sent to respondents on or about February 4, 2015, followed by a demand letter on April 13, 2015. Walker Aff., ¶ 21; Exhibits 4 and 5.

9. Department Staff made multiple attempts to contact respondents in an effort to resolve the outstanding Notice of Violation and unsigned Order on Consent. Mascio Aff., ¶¶ 8-9. Receiving no response, on or about August 6, 2015, Department Staff commenced this administrative enforcement proceeding by service of a Notice of Pre-Hearing, Hearing, and Complaint upon respondents. Ukeritis Aff., ¶ 12; Exhibit 6.

10. Respondents requested that the pre-hearing conference be rescheduled to October 20, 2015, but on October 19, 2015, respondents canceled the conference via a voicemail left for Department Staff counsel. Ukeritis Aff., ¶ 15.

11. Respondents failed to answer the complaint by the original response date of September 15, 2015, and by the extended response date of October 15, 2015. Ukeritis Aff., ¶ 16. As of the date of this ruling, respondents have not answered the complaint.

12. On May 15, 2017, Department Staff served a motion for default and motion for order without hearing upon respondents. Respondents requested additional time to respond, and on August 31, 2017, by their then-attorney, respondents replied to Department Staff's motion for default and motion for order without hearing.

DISCUSSION

Department Staff's complaint includes three causes of action. All three allege violations of Section 25-0401(1) of the ECL, which requires a permit from the Department to conduct any regulated activities in or adjacent to any tidal wetland. "Regulated activities" include

> any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, or any soil, stones, sand gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads; the driving of any pilings, or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

ECL Section 25-0401(2).

In support of the Motion, Department Staff provided the Walker Affidavit, sworn to by Andrew C. Walker, Regional Manager of the Bureau of Marine Habitat and Acting Regional Manager of the Bureau of Habitat, Region 1. In his affidavit, Mr. Walker discussed the benefits of tidal wetlands, including marine food production, wildlife habitat, flood and storm and hurricane control, as well as recreation. Walker Aff., ¶ 26. The site includes both Coastal Zone, Shoals, Bars and Flats ("SM") as well as Littoral Zone ("LZ") areas. Walker Aff., ¶ 7. As stated in the Walker Affidavit,

> SM and LZ vary in their contributions to marine food production and other tidal wetland values. Some coastal shoals, bars and flats and some littoral zones are areas of extremely high biological productivity and are nearly or equally as important in this respect as intertidal marshes and coastal fresh marshes. While these areas can appear barren at first glance, a multitude of infauna, such as clams, worms and worm-like organisms, arthropods, echinoderms, etc., may be found directly below the surface. Primary productivity occurs within these zones as well, be it phytoplankton such as diatoms up to green, red, and/or brown algae. Additionally, these areas serve as nursery grounds for a variety of fish species.

Walker Aff., ¶ 27.

Section 661.5 of 6 NYCRR sets forth the Department's Tidal Wetlands Land Use Guidelines. Those guidelines classify the in-kind and in-place replacement of existing functional bulkheads and similar structures (Section 661.5(b)(22) of 6 NYCRR) as "GCp – Generally Compatible Use – Permit Required." According to the Walker Affidavit, replacing the bulkhead would increase the likelihood of man-made impacts on the wetland, "including the potential reduction in present and potential marine food production, flood, hurricane, and storm control, cleansing ecosystems and absorbing silt and organic materials, and wildlife habitat." Walker Aff., ¶ 28.

The Walker Affidavit went on to discuss the impacts of the overwater platform. The guidelines classify "the construction of accessory structures or facilities for any use listed in 46 and 47, other than accessory structures for facilities covered by item 50 or covered specifically in this list" as "presumptively incompatible" within the SM and LZ. Section 661.5(b)(49) of 6 NYCRR. A permit is required for such construction.

Moreover, Section 661.5(b)(57) of 6 NYCRR provides that "[a]ny type of regulated activity not specifically listed in this chart and any subdivision of land" requires a permit. Mr. Walker noted that the expansion of the overwater platform would have the same impacts as replacing the bulkhead, "as well as the increased potential for exposure of the wetland to chemicals related to the construction and maintenance of the platform." Walker Aff., ¶ 29.

With respect to the overwater platform, Mr. Walker also cited to Section 608.7(b) of 6 NYCRR, noting that the Department's review must determine whether a proposed alteration to

the water resources of the State would be consistent with the "reasonable and necessary" standards set forth in Section 608.8, specifically, the water dependent nature of a use. Mr. Walker concluded that the expansion of the overwater platform serves no water-dependent use, and therefore does not meet the reasonable and necessary standard of Section 608.8(a).

The Walker Affidavit documented the violations observed, as well as the attempts by Department Staff to bring the site into compliance. In its complaint, Department Staff alleged that respondents violated Article 25 of the ECL and Part 661 of 6 NYCRR by causing or allowing the reconstruction of an overwater deck exceeding the allowable size of 225 square feet, increasing it to 295 feet, without a permit. Complaint, ¶¶ 36-39 (first cause of action). In addition, the complaint alleged that respondents violated Article 25 and Part 661 by causing or allowing the reconstruction of a bulkhead, as well as a previously existing boat ramp and float, without a permit. Complaint, ¶¶ 41-45 (second cause of action); Complaint, ¶¶ 47-50 (third cause of action).

Motion for Default Judgment

Department Staff seeks a default judgment, as well as an order without hearing. Sections 622.15(a) and (b)(2) of the Department's default judgment procedures provides that a respondent's failure to file a timely answer constitutes a default and a waiver of respondent's right to a hearing. It is undisputed that respondents failed to answer Department Staff's complaint by the initial response date of September 5, 2015, or the extended response date of October 30, 2015. Ukeritis Aff., ¶ 16. Moreover, as of the date of this ruling, respondents have not answered the complaint.

Respondents also failed to appear for the pre-hearing conference, despite respondents' requests to reschedule, and Department Staff's efforts to accommodate those requests. Mascio Aff., ¶¶ 11-17. Sections 622.15(a) and (b)(2) of 6 NYCRR provides that proof of failure to appear at a pre-hearing conference constitutes a default and a waiver of a respondent's right to a hearing. It is undisputed that respondents did not appear for the pre-hearing conference, despite Department Staff's efforts to reschedule that conference, at respondents' request.

As the Commissioner stated in *Matter of Alvin Hunt, d/b/a Our Cleaners* (Decision and Order dated July 25, 2006, at 3), "[t]he consequences of a default is [sic] that the respondent waives the right to a hearing and is deemed to have admitted the factual allegations of the complaint or other accusatory instrument on the issue of liability for the violations charged." Moreover, the Commissioner has stated, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them." Id. at 6.

In addition, in support of a motion for a default judgment, Department Staff must "provide proof of the facts sufficient to support the claim[s]" alleged in the complaint. *Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3. Department Staff is required to support their motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that Department Staff has a viable claim. *Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018, at 1

(citing *Woodson v Mendon Leasing Corp.*, 100 N. Y. 2nd 62, 70-71 (2003)). As discussed below, respondents have not contested the facts with respect to liability for the violations alleged.

The record establishes that Department Staff served the notice of hearing and complaint upon respondent, respondent failed to file an answer to the complaint, and failed to appear at a pre-hearing conference as directed in the notice of hearing served with the complaint. The Motion included a proposed order. In addition, Department Staff has provided proof of the facts sufficient to support the complaint's allegations. The Department is entitled to a default judgment in this matter with respect to liability pursuant to the provisions of Section 622.15 of 6 NYCRR. *See Matter of 366 Avenue Y Development Corp.*, Ruling on Motion for Default Judgement, at 9 (April 23, 2010) (granting the motion for default with respect to liability, but concluding that a hearing should be held to determine the appropriate relief).

Motion for Order Without Hearing

Section 622.12 of 6 NYCRR provides for an order without hearing when, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the New York Civil Practice Law and Rules ("CPLR") in favor of any party. "Summary judgment is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to judgment as a matter of law." *Matter of Frank Perotta*, ALJ Ruling on Motion for Summary Order and Summary Report, at 1, *adopted by* Partial Summary Order of the Commissioner, January 10, 1996, at 1 (adopting ALJ Summary Report).

CPLR 3212(b) provides that a motion for summary judgment shall be granted, "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." Once the moving party has put forward a prima facie case, the burden shifts to the non-movant to produce sufficient evidence to establish a triable issue. *Matter of Locaparra*, Commissioner's Decision and Order, June 16, 2003.

Respondents acknowledged that "the facts stated [in Department Staff's motion] regarding liability are not in dispute. The only issues of triable fact that exist are those related to the proposed penalty." Gershonowitz Aff., ¶ 3. According to respondents, "there are significant mitigating circumstances," including Janice Grossman's illness. Id., ¶ 9; Grossman Aff., ¶ 4.

Section 622.12(f) of 6 NYCRR provides that "[t]he existence of a triable issue of fact regarding the amount of civil penalties which should be imposed will not bar the granting of a motion for an order without hearing. If this issue is the only triable issue of fact presented, the ALJ must immediately convene a hearing to assess the amount of penalties to be recommended to the commissioner." Department Staff's submissions on the Motion are sufficient to determine that Department Staff is entitled to judgment on liability for the three causes of action alleged in the complaint, and Department Staff's motion for an order without hearing is granted with respect to liability. A hearing will be convened to determine the appropriate penalty to be recommended to the Commissioner.

Penalty

Section 71-2503(1)(a) of the ECL provides that "[a]ny person who violates, disobeys or disregards any provision of article twenty-five shall be liable to the people of the state for a civil penalty of not to exceed ten thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard by the commissioner. Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation."

The complaint sought an order finding respondents liable for the violations alleged, imposing a civil penalty of thirty thousand dollars ($30,000), and ordering respondents, within sixty days of the date of the order, to reduce the overwater deck by at least seventy square feet to the pre-existing area of no more than 225 square feet. Complaint, Wherefore Clause at II, III and IV. The Motion requested the same relief, as well as a finding that respondents had defaulted. Ukeritis Aff., ¶ I. In addition, Department Staff requested that the Commissioner order respondents, within sixty days of the date of the order, to remove the impervious stone patio in and adjacent to the tidal wetland, and to erect a permanent fence separating the overwater deck and dock. Motion, Wherefore Clause at IV. In the Motion, Department Staff took the position that the $30,000 penalty "is reasonable and significant enough to ensure future compliance by Respondents, without further assessing penalties for each day the oversize deck, bulkhead, and boat ramp/float remain installed at the Premises." Department Staff's Memorandum of Law, at 10.

The Walker Affidavit included a discussion of the Department's Civil Penalty Policy ("CPP"), as well as the Tidal Wetlands Enforcement Policy ("DEE-7"). Specifically, the CPP states that "[t]he starting point of any penalty calculation should be a computation of the potential statutory maximum for all provable violations." CPP at IV(2). According to Mr. Walker, the maximum penalty for the three violations alleged in the complaint would be $10,000 per violation per day. Mr. Walker went on to state that respondents had realized an economic benefit by increasing the size of their overwater deck, but that "[a]s all referenced structures were rebuilt structures, there was minor environmental harm." Walker Aff., ¶ 33(C); DEE-7 at V(2). Mr. Walker noted that the respondents had been repeat violators, and had shown disregard for the Department's regulations by not coming into compliance pursuant to an order on consent. Mr. Walker concluded that "[b]ased upon past behavior of these Respondents, a reduction in penalty is not warranted and will not likely result in a deterrent effect." Walker Aff., ¶ 33(E); DEE-7 at V(3) and (4).

Respondents asserted that there were significant mitigating circumstances, and maintained that Mr. Walker's discussion of the Department's penalty policy was "inaccurate in a number of respects." Id., ¶ 4. Respondents argued that due to Janice Grossman's illness, the alleged violations were "not a priority." Grossman Aff., ¶ 4. According to respondents, their experience with an employee of the Department "left [respondents] with the feeling that the Department process was arbitrary." Id., ¶ 5.

In his affidavit, Mr. Grossman stated that

> [t]his enforcement action is based on the result of the emergency situation caused by Hurricane Sandy. Our deck and backyard were washed away and erosion was threatening our house. We hired a contractor to replace our deck. A representative of FEMA told us that we needed to connect the deck to the side neighbor and if we did not, we would probably lose our deck again in the next storm. The connection on the sides is, to my knowledge, the only addition to the size of the deck after Hurricane Sandy. We had no idea that following the directions of FEMA could be a violation of State Law.

Grossman Aff., ¶ 3. Respondents' counsel argued that "[t]o characterize this attempt to protect their home after Hurricane Sandy as economic benefit seriously misconstrues the situation." Gershonowitz Aff., ¶ 7.

Respondents took the position that they had not shown disregard for the regulations, and that in fact this enforcement action began when they applied for a permit for a boat lift. In his affidavit, respondents' counsel maintained that "we are here largely because Respondents were concerned about compliance with the regulations. By accepting the small addition to the deck after Hurricane Sandy, Respondents showed ignorance of the regulations, not disregard." Gershonowitz Aff., ¶ 8. According to respondents, "there can only be a deterrent effect if the violation is intentional." Id., ¶ 10. Noting that Mr. Walker characterized the environmental harm as "minor," (Walker Aff., ¶ 33(C)), respondents argued that none of the factors that would support an enhanced penalty pursuant to the Department's penalty policies were present, and that the requested penalty amount should be significantly reduced.

Respondents contended that their neighbors have a variety of structures in and affecting the water, and that in some instances those structures are not permitted, but no enforcement action has been taken. According to respondents, removal of a portion of the deck would create a dangerous situation. Respondents concluded by requesting a hearing on the penalty, or in the alternative, that an order be issued that would not include removal of any portion of a structure, and a civil penalty "significantly less than the maximum." Gershonowitz Aff., ¶ 17.

RULING

1. Department Staff's motion for order without hearing is granted on the issue of liability against respondents Janice and Myles Grossman for the violations alleged; specifically, the violations of Article 25 of the ECL and Part 661 of 6 NYCRR by reconstructing an oversized overwater deck, bulkhead, and a previously existing boat ramp and float, all after Superstorm Sandy, and without a permit;

2. Department Staff's motion for default judgment is granted with respect to liability; and

3. On the issue of the civil penalty and remedial relief requested in Department Staff's motion, the motion for an order without hearing is otherwise denied.

A hearing on the issue of the civil penalty and remedial relief requested is scheduled for **10:00 a.m. on Thursday, January 24, 2019,** at the Department's Region 1 office, SUNY at Stony Brook, 50 Circle Road, Stony Brook, New York.

Pursuant to Section 622.9(e) of 6 NYCRR, failure to appear at the hearing constitutes a default and a waiver of respondents' right to a hearing. Adjournments will be granted only for good cause and with the permission of the ALJ. Section 622.10(g).

_____/s/_____
Maria E. Villa
Administrative Law Judge

Dated: January 3, 2019
Albany, New York

APPENDIX A

Matter of Janice and Myles Grossman
DEC File No. R1-20150611-70
Motion for Default and Motion for Order Without Hearing

Department Staff

- May 12, 2017 Notice of Motion for Default and Motion for Order Without Hearing, including:

  A. May 12, 2017 Motion for Default and Order Without Hearing;

  B. May 12, 2017 Affirmation of Jennifer M. Ukeritis, Esq. in support;

  C. Affidavit of Andrew C. Walker, sworn to May 12, 2017;

  D. Affidavit of Karen Mascio, sworn to May 12, 2017; and

  E. Exhibits to affidavits, including:

  Exhibit 1: July 28, 2014 letter from Jeffrey Leibstein, Seaboard Mechanical Ltd, to Division of Environmental Permits, NYSDEC, enclosing permit application.

  Exhibit 2: September 30, 2014 Record of Inspection.

  Exhibit 3: October 7, 2014 Notice of Violation.

  Exhibit 4: February 4, 2015 letter from Andrew C. Walker to Janice Grossman, enclosing Order on Consent.

  Exhibit 5: April 13, 2015 letter from Andrew C. Walker to Janice Grossman, enclosing Order on Consent.

  Exhibit 6: August 6, 2015 letter from Karen Mascio to Janice and Myles Grossman, enclosing Notice of Pre-Hearing Conference, Hearing and Complaint, Verification, and Verified Complaint, all dated August 6, 2015; Penalty Calculation, and certified mail return receipts.

  Exhibit 7: Certified mail receipt, with attached October 7, 2015 Notice of Rescheduled Pre-Hearing Conference and Time to Answer; August 6, 2015 Verified Complaint; and Penalty Calculation.

  Exhibit 8: March 6, 1998 Deed.

  Exhibit 9: May 12, 2003 Notice of Violation.

  Exhibit 10: August 14, 2003 letter from Charles Hamilton to Myles and Janice Grossman, re: written warning of alleged violation.

Exhibit 11: April 5, 2004 Notice of Violation.

Exhibit 12: Photographs (September 30, 2014).

Respondents

- August 31, 2017 Response to Motion for Default and Motion for Order Without Hearing, including:

  (1) Affidavit of Myles Grossman, sworn to August 30, 2017; and

  (2) Affirmation of Aaron Gershonowitz, Esq., dated August 31, 2017.