

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

In the Matter of the Alleged Violations of Article 17 of
the Environmental Conservation Law of the State of New York
(ECL) and Part 750 of Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of New York
(6 NYCRR),

ORDER

DEC Case No:
CO 7-20100209-12

-by-

TED HARRISON,

Respondent.

On June 23, 2010, an adjudicatory hearing was convened before Richard R. Wissler, Administrative Law Judge (ALJ) of the Office of Hearings and Mediation Services of the New York State Department of Environmental Conservation (Department). The hearing addressed allegations of Department staff that respondent Ted Harrison, the owner and operator of the Snow White Laundry, located at 489 Church Street, Village of Hannibal, Oswego County, New York, violated 6 NYCRR 750-1.13 and SPDES permit NY-0232432, by failing to file monthly discharge monitoring reports for an outfall from January through August 2008.

By memorandum dated June 29, 2010, Alexander B. Grannis, Commissioner of the Department, delegated decision making authority in this matter to the undersigned, Louis A. Alexander, Assistant Commissioner for Hearings and Mediation Services.

ALJ Wissler prepared the attached hearing report, which I adopt as my decision in this matter subject to my comments below. Pursuant to an application for permit transfer dated March 7, 2006, SPDES permit NY-0232432 was transferred to Ted Harrison for the Snow White Laundry (see Hearing Exh 2 [with a prior effective date of May 1, 2005]) and included a requirement for the filing of monthly discharge monitoring reports (see id., condition “b” [under the heading “Recording, Reporting and Additional Monitoring Requirements”]).

As set forth in the ALJ’s hearing report, respondent Ted Harrison failed to file the required discharge monitoring reports for an eight month period in calendar year 2008, failed to file an answer to the complaint served by Department staff in this matter, and failed to appear for the adjudicatory hearing on June 23, 2010.

As a consequence of respondent’s failure to answer or appear in this matter, the ALJ recommended that Department staff’s motion for default be granted, and I concur

that staff is entitled to a default judgment pursuant to 6 NYCRR 622.15. Furthermore, at the hearing Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see Hearing Report, at 3) that respondent failed to comply with the conditions of its SPDES permit. Accordingly, staff is entitled to a judgment based on record evidence.¹

Any person who violates a SPDES permit issued pursuant to titles 1 through 11 or title 19 of article 17 of the Environmental Conservation Law or the regulations promulgated thereunder is liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation. In this matter, Department staff requested, and the ALJ has recommended, a civil penalty of six thousand dollars (\$6,000). The recommended penalty is authorized and appropriate.

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. By failing to answer or appear in this proceeding, respondent Ted Harrison waived his right to be heard at the hearing.

II. Furthermore, respondent Ted Harrison, based upon the proof adduced at the adjudicatory hearing, is adjudged to have violated condition "b" (under the heading "Recording, Reporting and Additional Monitoring Requirements") of respondent's SPDES permit NY-0232432, by failing to file discharge monitoring reports for the period January through August 2008.

III. Within fifteen (15) days of the service of this order upon respondent, respondent shall pay a civil penalty in the amount of six thousand dollars (\$6,000) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation. The penalty payment shall be sent to the following address:

Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500
Attn: Elissa Armater.

¹ Department staff also alleged that respondent Ted Harrison violated 6 NYCRR 750-1.13. However, it is not clear from staff's papers why staff cited that section, rather than 6 NYCRR 750-2.5 which has been the basis of staff's allegations in prior proceedings where there has been a failure to file discharge monitoring reports. Furthermore, staff's papers do not address whether respondent is subject to 6 NYCRR 750-1.13 (see the criteria set forth in 6 NYCRR 750-1.13[b] and [d]). Based on the papers before me, I am not able to determine whether that regulatory section was violated. Notwithstanding the foregoing, respondent's violation of the terms of its SPDES permit by failing to file discharge monitoring reports provides sufficient support for the civil penalty and remedial relief requested by Department staff and recommended by the ALJ.

IV. Any questions or correspondence regarding this order, other than those relating to payment or submission of the civil penalty, shall be addressed to:

Meredith Streeter, P.E.
Chief, Compliance Assurance Section
Bureau of Water Compliance
Division of Water
New York State Department of Environmental Conservation
625 Broadway, 4th Floor
Albany, New York 12233-3506.

V. The provisions, terms and conditions of this order shall bind respondent Ted Harrison, his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Louis A. Alexander
Assistant Commissioner

Dated: Albany, New York
August 3, 2010

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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the Environmental Conservation Law of the State of New York
(ECL) and Part 750 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York (6 NYCRR),

HEARING REPORT

DEC CASE NO:
CO 7-20100209-12

-by-

TED HARRISON,

Respondent.

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Procedural History

On February 19, 2010, respondent/permittee, Ted Harrison (respondent) was personally served with a notice of hearing and complaint, dated February 10, 2010, alleging eight (8) violations of the reporting requirements authorized by 6 NYCRR 750-1.13 for failure to file discharge monitoring reports (DMRs) for one stabilization pond overflow outfall to a tributary of Ninemile Creek, a Class C stream, for the months of January through August 2008, as required by its SPDES permit NY0232432, for a facility known as Snow White Laundry, located at 489 Church Street, Village of Hannibal, Oswego County, New York 13074. The complaint seeks the following relief: (1) A finding that respondent is in violation of the cited regulations and the provisions of its SPDES permit, (2) the assessment of a civil penalty in the amount of \$6,000, and (3) such other relief as the Commissioner may deem just and proper. In addition, the notice of hearing advised respondent that any answer to the complaint must be filed by March 15, 2010, and that an adjudicatory hearing in the matter was scheduled for April 13, 2010, requiring its appearance. Pursuant to telephone conversations between respondent and Scott W. Crisafulli, Esq. Chief Counsel of the Department's Water Bureau, and confirmed by subsequent correspondence, the date of the adjudicatory hearing was rescheduled to June 23, 2010, at 10:00 AM. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled for June 23, 2010.

On June 23, 2010, the adjudicatory hearing was convened before the undersigned Administrative Law Judge (ALJ) of the Department of Environmental Conservation's (Department) Office of Hearings and Mediation Services (OHMS) at the Department's Region 7 offices, 615 Erie Boulevard West, Syracuse, New York 13204. Department staff was represented by Scott W. Crisafulli, Esq., Chief of the Water Bureau. No one appeared on behalf of respondent.

Department staff called one witness, Karen Baker, Environmental Program Specialist 2, with the SPDES Compliance Assurance Section of the Department's Division of Water. Department staff submitted five (5) exhibits, all of which were received in evidence. At the close of the hearing, Department staff moved for a default judgment.

Applicable Regulatory Provisions

6 NYCRR 750-1.2(a)(28): “Discharge Monitoring Report (DMR) means a report submitted by a permittee to the department summarizing the effluent monitoring results obtained by the permittee over periods of time as specified in the SPDES permit.”

6 NYCRR 750-1.13(a): “Any discharge authorized by a SPDES permit shall be subject to such requirements for monitoring the intake, discharge, waters of the state or other source or sink as may be reasonably required by the department to determine compliance with effluent limitations and water quality standards that are or may be effected by the discharge; including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods), and if imposed shall be included as provisions of the SPDES permit.”

6 NYCRR 750-2.5(e)(1): “The permittee shall submit the results of any wastewater or ambient monitoring results required by the permit at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee by the department, in a format acceptable to the department, or by the electronic transfer of data as approved by the department. Electronic submissions shall conform to the format, standards and other conditions specified by the department. The regional water engineer may also require the submittal of such other information as is necessary to determine the validity of monitoring results submitted in accordance with permit requirements. In no event shall reports on discharges to surface waters required by this subdivision be submitted at a frequency of less than once per year.”

6 NYCRR 756.3(a), repealed and replaced by 6 NYCRR 750-2.5(e)(1) in 2003, provided: “(a) Any results obtained by a permittee pursuant to monitoring requirements in a SPDES permit shall be reported at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee with the SPDES permit.”

Findings of Fact

1. State Pollution Discharge Elimination System (SPDES) Permit NY0232432 (the Permit) was issued to a prior permittee by the Department effective May 1, 1995, for a facility known as Snow White Laundry, located at 489 Church Street, Village of Hannibal, Oswego County, New York 13074. By application of transfer, the Permit was transferred to Ted Harrison (respondent), effective May 1, 2005, and was current as of the dates of the violations alleged in the complaint. In the application of transfer, respondent Ted Harrison certified that he was the owner/operator of the facility.
2. The Permit authorizes one (1) stabilization pond overflow outfall to a tributary of Ninemile Creek, a Class C stream. The outfall is designated “001”. The Permit sets effluent parameters for outfall 001 for flow, biological oxygen demand, total suspended solids, pH, oil and grease, foaming agents and temperature.
3. Pages 2 and 3 of the Permit delineate the recording, reporting and additional monitoring requirements of the Permit. On page 2 the permit states, “Effluent samples are to be

taken on a monthly basis during a period of discharge from the stabilization pond. If there is no discharge during the month, the submitted DMRs should so indicate.” Moreover, on page 3 the permit states, “Samples and measurements for outfall 001 shall be taken during a period of discharge from the stabilization pond prior to mixing with the receiving waters.”

4. Karen Baker, is an employee of the Department whose duties include the care, custody, and maintenance of the DMRs filed with the Department.
5. On June 23, 2010, Karen Baker searched the DMR files of the Department for any and all DMRs filed by respondent under the Permit.
6. As a result of her search, Karen Baker determined that there were no monthly DMRs in the files of the Department for the Permit for outfall 001 for the months of January through August 2008 for the effluent parameters indicated in Finding of Fact 2.
7. On February 19, 2010, respondent was personally served with a notice of hearing and complaint, dated February 10, 2010, alleging eight (8) violations of ECL article 17, its implementing regulations and the express terms of SPDES Permit No. NY0232432 for failure to file the DMRs indicated in Finding of Fact 6. The notice of hearing advised respondent that it was required to file an answer to the complaint by March 15, 2010, and that an adjudicatory hearing in this matter would be convened on April 13, 2010, at the Department’s Region 7 offices.
8. Pursuant to telephone conversations with respondent and confirmed by subsequent correspondence, the date of the adjudicatory hearing was adjourned to June 23, 2010.
9. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing held on June 23, 2010.

Discussion

Department staff’s proof presents a prima facie case demonstrating that respondent failed to file DMRs with the Department for outfall 001 for the months of January through August 2008 as set forth in Finding of Fact 6, above, in violation of the express provisions of SPDES permit NY0232432 and applicable Department regulations.

The record shows that respondent was personally served with the notice of hearing and complaint on February 19, 2010, and that it failed to file an answer to the complaint or to appear for the scheduled adjudicatory hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing, conducted in respondent’s absence, demonstrates by a preponderance of the evidence that respondent failed to submit annual DMRs for the months of January through August 2008, in violation of the express provisions of SPDES

permit NY0232432 and applicable Department regulations. The Department is entitled to judgment upon the facts proven.

Department staff's proposed order and the \$6,000 civil penalty it seeks are consistent with the Department's penalty policy as well as applicable provisions of ECL article 71.

Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. Granting Department staff's motion for default, finding respondent in default pursuant to the provisions of 6 NYCRR 622.15;
2. Finding respondent in violation of the express provisions of SPDES permit NY0232432 and applicable Department regulations for failure to submit monthly DMRs for the months of January through August 2008 for a facility it operates known as Snow White Laundry, located at 489 Church Street, Village of Hannibal, Oswego County, New York 13074, based upon the proof adduced at the adjudicatory hearing;
3. Directing respondent to pay a civil penalty in the amount of six thousand dollars (\$6,000.00); and
4. Directing such other and further relief as he may deem just and proper.

_____/s/_____
Richard R. Wissler
Administrative Law Judge

Dated: Albany, New York
July 29, 2010

EXHIBIT CHART – DMR EXPEDITED PROCEEDINGS

Matter of Ted Harrison (Snow White Laundry)
June 23, 2010 – Region 7

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	February 10, 2010 cover letter, with attached Notice of Hearing, Complaint, and Statement of Readiness (all dated February 10, 2010); Affidavit in Support of Karen Baker, sworn to February 9, 2010; and April 13, 2010 letter from Scott Crisafulli, Esq. to Ted Harrison, re adjournment to June 23, 2010	✓	✓	Department Staff	
2	SPDES Permit No. NY-0232432 (5/1/95 – 5/1/2000)	✓	✓	Department Staff	
3	Affidavit of Personal Service, sworn to February 22, 2010 by Lieutenant James Masuicca	✓	✓	Department Staff	
4	Affidavit of Service of Elissa Armater, sworn to June 21, 2010, with attached April 13, 2010 letter from Scott Crisafulli, Esq. to Ted Harrison, envelope marked “Unclaimed,” and USPS documents	✓	✓	Department Staff	
5	Penalty Calculation	✓	✓	Department Staff	