

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 (“ECL”) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”),

**ORDER**

DEC Case No.  
2-607278AL

-by-

**HOP HING REALTY CORP.,**

Respondent.

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On September 19, 2014, an adjudicatory hearing was convened before D. Scott Bassinson, 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 the allegations of Department staff that respondent Hop Hing Realty Corp. (“respondent”) violated 6 NYCRR 612.2 by failing to renew the registration of its petroleum storage facility located at 236-240 Mott Street, New York, New York (“facility”).

ALJ Bassinson prepared the attached hearing report, which I adopt as my decision in this matter, subject to my comments below. As set forth in the ALJ’s hearing report, respondent Hop Hing Realty Corp. failed to file an answer to the complaint served by Department staff in this matter, failed to appear at a pre-hearing conference scheduled for August 6, 2014 (as directed in the cover letter served with the notice of hearing and complaint), and failed to appear for the adjudicatory hearing scheduled in the matter for September 9, 2014, as directed in the notice of hearing (see Hearing Report at 4 [Finding of Fact No. 9]).

As a consequence of respondent’s failure to answer or appear in this matter, the ALJ recommends that Department staff’s motion for default judgment be granted (see Hearing Report at 5). Furthermore, at the hearing conducted on September 19, 2014, Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see Hearing Report at 5). Accordingly, staff is entitled to a judgment based on record evidence.

In its papers, Department staff sought a civil penalty of ten thousand dollars (\$10,000) (see Staff Ex. 1, Complaint, at Wherefore Clause ¶ II). At the September 19, 2014, hearing, Department staff moved to reduce the requested civil penalty to seven thousand five hundred dollars (\$7,500) (see Hearing Report at 2). Respondent failed to renew registration of its facility upon the expiration of its existing registration on January 4, 2012. Staff’s motion to reduce the penalty is in accordance with administrative precedent (see Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2), and the ALJ granted the motion. The recommended civil penalty of seven thousand five hundred dollars (\$7,500) is authorized

and appropriate. Respondent is also directed to submit to the Department a petroleum bulk storage registration application for the facility, plus applicable registration fees, within fifteen (15) days of the service of this order upon it.

**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 Hop Hing Realty Corp. waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent Hop Hing Realty Corp. is adjudged to have violated 6 NYCRR 612.2 for failing to renew the registration of its petroleum storage facility located at 236-240 Mott Street, New York, New York.
- III. Within fifteen (15) days of the service of this order upon respondent, respondent Hop Hing Realty Corp. shall submit to the Department a petroleum bulk storage registration application for the facility, plus applicable registration fees.
- IV. Within fifteen (15) days of the service of this order upon respondent, respondent Hop Hing Realty Corp. shall pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. The facility petroleum bulk storage registration application, applicable registration fees, and the penalty payment shall be sent to the following address:

Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
Attn: Brooke Turallo.

- VI. Any questions or other correspondence regarding this order shall also be addressed to Brooke Turallo at the address referenced in paragraph V of this order.



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 (“ECL”) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”),

**HEARING REPORT**

DEC CASE NO.  
2-607278AL

-by-

**HOP HING REALTY CORP.,**

Respondent.

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Procedural History

Respondent Hop Hing Realty Corp. (“respondent”) was served with a notice of hearing and complaint, dated July 7, 2014, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 612.2, for failure to renew its registration of its petroleum storage facility located at 236-240 Mott Street, New York, New York. The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 17-1009 and 6 NYCRR 612.2; (2) assessing a civil penalty in the amount of ten thousand dollars (\$10,000); (3) directing respondent to register its petroleum storage facility within fifteen (15) days of the service of the Commissioner’s order upon respondent, by remitting the registration fee set forth in ECL 17-1009(2) and a complete registration application in accordance with 6 NYCRR 612.2; and (4) granting such other and further relief as the Commissioner may deem just and proper.

Respondent is an active domestic business corporation in the State of New York. Accordingly, service of the notice of hearing and complaint on respondent was made by serving the New York State Department of State on July 10, 2014 (see Staff Exhibit [“Staff Ex.”] 2). Respondent was also served with the notice of hearing and complaint by regular mail on July 10, 2014 (id.). Respondent failed to file an answer to the complaint, failed to appear at a pre-hearing conference scheduled for August 6, 2014, and failed to appear at an adjudicatory hearing scheduled for September 9, 2014, as directed in the cover letter served with the notice of hearing and complaint.

As stated in the notice of hearing, an adjudicatory hearing was convened on September 9, 2014 before Administrative Law Judge (“ALJ”) Michael S. Caruso of the Department of Environmental Conservation’s (“Department”) Office of Hearings and Mediation Services (“OHMS”) at the Department’s Region 2 offices, 1 Hunter’s Point Plaza, 47-40 21<sup>st</sup> Street, Long Island City, New York 11101-5407. Department staff was represented by Benjamin Conlon, Esq., Bureau Chief, Office of General Counsel, Bureau

of Remediation, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1500. No one appeared on behalf of respondent.

Department staff indicated that it was prepared to proceed with the hearing, proffering a program staff witness. Noting for the record that respondent had failed to answer the complaint, failed to appear for the prehearing conference and failed to appear for the adjudicatory hearing, Department staff orally moved for a default judgment pursuant to 6 NYCRR 622.15. The ALJ reserved on the default motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). Moreover, the ALJ noted Department staff's readiness for hearing and noted the failure of respondent to appear. The ALJ advised that the hearing, in the absence of respondent, would be convened on a subsequent date.

On September 19, 2014, the adjudicatory hearing was reconvened before the undersigned ALJ at the Department's Central Office at 625 Broadway, Albany, New York 12233. Department staff was represented by Adriana Le Blan, Esq. Department staff orally renewed its motion for a default judgment, and also sought judgment on the merits.

Staff also made a motion to amend the complaint to reduce the requested penalty from ten thousand dollars (\$10,000) to seven thousand five hundred dollars (\$7,500), in accordance with general penalty guidelines as set forth in Matter of 12 Martense Assocs. LLC, Order of the Commissioner, December 19, 2011, at 2 (civil penalty of \$7,500 is appropriate for registration violations of between two and five years' duration). Reduction of the penalty requested in the complaint in this matter does not raise the same due process concerns as would a request to increase the penalty in a default situation (see Matter of Reliable Heating Oil, Inc., Decision and Order of the Commissioner, October 30, 2013, at 2-3; see also CPLR 3215[b] (default judgment "shall not exceed in amount ... that demanded in the complaint")), and the requested reduction does not otherwise prejudice respondent. I therefore granted staff's motion to amend at the September 19, 2014 hearing (see 6 NYCRR 622.5[b] ["a party may amend its pleading at any time prior to the final decision of the commissioner by permission of the ALJ ... and absent prejudice to the ability of any other party to respond"]).

Department staff called one witness, Brooke Turallo, a Legal Assistant in the Department's Office of General Counsel's Petroleum Spill and Bulk Storage ("PBS") Section. In all, seven (7) exhibits were received in evidence.

#### Applicable Regulatory Provision

Section 612.2. Registration of facilities.

(a) *Existing facilities.*

(1) Within one year of the effective date of these regulations, the owner of any petroleum storage facility having a capacity of over 1,100 gallons must register the

facility with the department. This shall include any out-of-service facility which has not been permanently closed.

(2) Registration must be renewed every five years from the date of the last valid registration until the department receives written notice that the facility has been permanently closed or that ownership of the facility has been transferred.

#### Findings of Fact

1. Respondent Hop Hing Realty Corp. is the owner of a petroleum storage facility having a capacity of over 1,100 gallons located at 236-240 Mott Street, New York, New York (“facility”). In particular, petroleum storage tank number 001 at the facility has a capacity of 2,000 gallons and is located aboveground (Staff Ex. 1, Complaint [“Compl.”] ¶ 14; see also Staff Exs. 5, 6, and 7).
2. Respondent is an active domestic business corporation in the State of New York (Staff Ex. 3).
3. On December 6, 2006, the Department issued Petroleum Bulk Storage (“PBS”) Certificate Number 2-607278, registering the PBS facility, to respondent Hop Hing Realty Corp. (Staff Ex. 6). This registration expired on January 4, 2012 (id.).
4. On December 14, 1984, Han Ying, Inc., by deed, transferred all right, title and interest in the facility to respondent Hop Hing Realty Corp., the facility’s current owner. This deed is recorded in the Office of the City Register of the City of New York (Staff Ex. 4).
5. Brooke Turallo is a Legal Assistant in the PBS Section of the Department’s Office of General Counsel, and is authorized to access, search and inspect the Department’s unified information system (“UIS”) and “D2” databases. These databases contain petroleum storage facility records filed with the Department, which records include petroleum storage facility registrations filed pursuant to 6 NYCRR 612.2. (Testimony of Brooke Turallo).
6. On September 8 and 19, 2014, Brooke Turallo searched the petroleum storage facility records contained in the Department’s UIS and D2 databases for any petroleum facility registration filed by respondent for the facility (Testimony of Brooke Turallo).
7. As a result of her searches, Brooke Turallo determined that respondent has not renewed the registration of the facility upon the expiration of the existing registration on January 4, 2012 (Testimony of Brooke Turallo).
8. As shown by Receipt for Service No. 201407140045 issued by the New York State Department of State, respondent was served on July 10, 2014, pursuant to

section 306 of the Business Corporation Law with a notice of hearing and complaint dated July 7, 2014, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 612.2, for failure to renew the registration of its petroleum storage facility located at 236-240 Mott Street, New York, New York. The notice of hearing and complaint was also served on respondent by regular mail on July 10, 2014 (Staff Ex. 2).

9. Respondent failed to file an answer to the complaint; failed to appear at a pre-hearing conference scheduled for August 6, 2014, as directed in the cover letter served with the notice of hearing and complaint; and failed to appear for the adjudicatory hearing scheduled in the matter on September 9, 2014, as directed in the notice of hearing (Hearing Record; Staff Ex. 1).

### Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (see 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, "and failure to attend constitutes a default and a waiver of the opportunity for a hearing" (6 NYCRR 622.8[c]; see also 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to appear or to file a timely answer; and (iii) a proposed order (see 6 NYCRR 622.15[b][1]-[3]).

As the Commissioner has held, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them" (Matter of Alvin Hunt, d/b/a Our Cleaners, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim" (Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3).

In this case, Department staff's proof presents a prima facie case demonstrating that respondent failed to renew its registration of its petroleum storage facility located at 236-240 Mott Street, New York, New York, in violation of 6 NYCRR 612.2.

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint; failed to appear at a pre-hearing conference scheduled for August 6, 2014, as directed in

the cover letter served with the notice of hearing and complaint; and (iii) respondent failed to appear for the adjudicatory hearing scheduled in the matter on September 9, 2014, as directed in the notice of 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 September 19, 2014 hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent failed to renew the registration of its petroleum storage facility upon the expiration of its existing registration on January 4, 2012, in violation of 6 NYCRR 612.2. The Department is entitled to judgment upon the facts proven.

Department staff's proposed order<sup>1</sup> and the \$7,500 civil penalty it seeks are consistent with the Department's penalty policy, prior decisions of the Commissioner, and 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 Hop Hing Realty Corp. in default pursuant to the provisions of 6 NYCRR 622.15;
2. Holding, based upon the proof adduced at the adjudicatory hearing, that respondent Hop Hing Realty Corp. violated 6 NYCRR 612.2 by failing to renew the registration of its petroleum storage facility located at 236-240 Mott Street, New York, New York;
3. Directing respondent Hop Hing Realty Corp. to submit to the Department, within fifteen (15) days of the service of the Commissioner's order upon respondent, a complete registration application for the facility, accompanied by past due and current registration fees;
4. Directing respondent Hop Hing Realty Corp. to pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500); and

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<sup>1</sup> At the September 19, 2014 hearing, I granted Department staff's request that the findings and relief contained in the wherefore clause of staff's complaint, as amended herein, be considered staff's proposed order, in satisfaction of 6 NYCRR 622.15(b)(3) (see Matter of XHIKU LLC, Order of the Commissioner, September 22, 2014, at 1-2).



5. Directing such other and further relief as he may deem just and proper.

/s/

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D. Scott Bassinson  
Administrative Law Judge

Dated: Albany, New York  
September 24, 2014

**EXHIBIT CHART – PBS EXPEDITED PROCEEDING***Matter of Hop Hing Realty Corp.*

September 19, 2014 – Central Office, 625 Broadway, Albany, NY

DEC Case No. 2-607278AL - Edirof File Nos. 010226095215/010226112834

Exhibit No.	Description	ID'd	Rec'd	Offered By	Notes
1	Cover Letter from Adriana Le Blan, Esq., to respondent, dated July 7, 2014. Notice of Hearing and Complaint, dated July 7, 2014. Statement of Readiness, dated July 7, 2014. Affidavit of Brooke Turallo, sworn to July 8, 2014.	✓	✓	Department Staff	
2	Affidavit of Service of Brooke Turallo, sworn to September 8, 2014, attaching NYS Department of State (“DOS”) Receipt for Service, dated, July 10, 2014.	✓	✓	Department Staff	
3	NYS DOS Corporate Entity Information, dated September 8, 2014.	✓	✓	Department Staff	
4	New York City Department of Finance ACRIS Title Search, dated September 8, 2014. Deed to respondent, dated December 14, 1984.	✓	✓	Department Staff	
5	PBS Application/renewal form filed by Selina Shih, for PBS No. 2-607278, received November 17, 2006.	✓	✓	Department Staff	
6	PBS Certificate No. 2-607278 issued December 6, 2006, expiration date January 4, 2012.	✓	✓	Department Staff	
7	PBS Program Facility Information Report for PBS No. 2-607278, printed September 8, 2014.	✓	✓	Department Staff	
8	Affirmation of Adriana Le Blan dated September 18, 2014.	✓	NO	Department Staff	