

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

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In the Matter of the Alleged Violations  
of Articles 19 and 71 of the  
Environmental Conservation Law ("ECL")  
and Parts 201 and 232 of Title 6 of the  
Official Compilation of Codes, Rules and  
Regulations of the State of New York ("6  
NYCRR"),

**ORDER**

DEC Case No.  
R2-20030918-251

- by -

**ADRIEN JOSEPH, d/b/a JOE'S DRY  
CLEANING,**

Respondent.

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Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Adrien Joseph, doing business as Joe's Dry Cleaning, by service of a motion for order without hearing and complaint dated July 8, 2005.

In accordance with 6 NYCRR 622.3(a)(3), respondent was served with a copy of the complaint by certified mail. Respondent received the complaint on July 22, 2005 at 471 Tompkins Avenue, Brooklyn, New York 11216, where respondent owns, operates and maintains a perchloroethylene ("PERC") dry cleaning facility.

The July 8, 2005 complaint alleges respondent's facility is a "mixed use" facility as that term is defined at 6 NYCRR 232.2(b)(42). The complaint further alleges that respondent installed a third-generation PERC dry cleaning machine in 1996, and operated that machine until January 28, 2004. The complaint also alleges that respondent replaced the third generation dry cleaning machine with a fourth generation dry cleaning machine on January 28, 2004.

The complaint charges the following violations:

1. From November 15, 1998 to January 28, 2004, respondent violated 6 NYCRR 232.5(a)(2)(iii) and (iv) and 6 NYCRR 232.6 by operating a third generation PERC dry cleaning machine at the facility without the requisite vapor barrier and general exhaust system.

2. Respondent violated 6 NYCRR 232.6 by failing to convert the third generation machine installed before May 15, 1997 to a fourth generation machine by June 26, 2003.

3. Respondent violated 6 NYCRR 232.15(b)(3) by failing to submit a timely registration application.

4. Respondent violated 6 NYCRR 232.14 by operating a dry cleaning facility without submitting any documents verifying that respondent is a certified owner/manager and a certified operator, or indicating that respondent hired a certified manager and operator to operate the facility.

5. Respondent violated 6 NYCRR 232.12(g) and 40 CFR 63 Subpart M by failing to submit to the Department federal National Emission Standards for Hazardous Air Pollutants ("NESHAP") reports for both the third and fourth generation machines that he owns, operates or maintains at the facility.

6. Respondent failed to comply with the Department's record keeping requirements at 6 NYCRR part 232.

7. Respondent violated 6 NYCRR 232.18 by failing to post the required notice prepared and supplied by the Department.

8. Respondent violated 6 NYCRR 232.16 by failing to have third party compliance inspections of the facility conducted for the calendar years 2000, 2001, 2002, 2003, and 2004.

9. On May 4, 2005, respondent violated 6 NYCRR 232.6(a)(1) by leaving vapor barrier doors open other than when a person is entering or exiting the room enclosure.

Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint has expired, and has not been extended by Department staff.

Department staff filed a motion for default judgment, dated August 17, 2005, with the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") Daniel P. O'Connell, who prepared the attached default summary report. I adopt the ALJ's

report as my decision in this matter, subject to my comments herein.

Based upon the record, I conclude that the proposed civil penalty and the measures recommended to address the violations are appropriate.

**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 Adrien Joseph 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 committed the violations alleged in the complaint.

IV. Respondent Adrien Joseph is hereby assessed a civil penalty in the amount of one hundred nine thousand and seventy three dollars (\$109,073), of which fifty-four thousand five hundred and thirty dollars (\$54,530) 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: Region 2 Office, Legal Affairs, 47-40 21st Street, Long Island City, New York, 11101, ATTN: Louis P. Oliva, Esq., Regional Attorney. The remaining portion of fifty-four thousand five hundred forty-three dollars (\$54,543) shall be suspended contingent upon respondent correcting all its violations to the satisfaction of Department staff within thirty (30) days after service of this order upon respondent. If the respondent fails to so correct the violations, the suspended portion of the penalty shall become immediately due and payable by respondent.

V. If respondent is currently operating the facility as a drop shop, Department staff is hereby authorized to seal the fourth generation dry cleaning machine at the facility.

VI. All communications from respondent to the Department concerning this order, other than the payment of the penalty, shall be made to John F. Byrne, Assistant Regional Attorney,

Region 2, Legal Affairs, 47-40 21st Street, Long Island City, New York, 11101.

VII. The provisions, terms and conditions of this order shall bind respondent Adrien Joseph and his agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: \_\_\_\_\_ /s/  
Denise M. Sheehan  
Commissioner

Dated: April 13, 2006  
Albany, New York

TO: Adrien Joseph (by Certified Mail)  
d/b/a Joe's Dry Cleaning  
471 Tompkins Avenue  
Brooklyn, New York 11216

John F. Byrne, Esq. (by Regular Mail)  
Assistant Regional Attorney  
New York State Department of  
Environmental Conservation  
Region 2, Legal Affairs  
47-40 21st Street  
Long Island City, New York 11101-5407

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

- of -

Alleged Violations of Article 19 of the Environmental  
Conservation Law (ECL) and Parts 201 and 232 of Title 6 of the  
Official Compilation of Codes, Rules and Regulations of the State  
of New York (6 NYCRR)

- by -

Adrien Joseph  
doing business as  
Joe's Dry Cleaning,  
Respondent.

DEC File No.  
R2-20030918-251

Default Summary Report

by

/s/

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Daniel P. O'Connell  
Administrative Law Judge

## Proceedings

On July 11, 2005, Staff of the Department of Environmental Conservation (Department staff) initiated this enforcement action against Adrien Joseph (Respondent) with service of a notice of motion for order without hearing and a complaint, both dated July 8, 2005, by certified mail, return receipt requested. In the July 8, 2005 complaint, Department staff contended that respondent owns and operates a domestic dry cleaning business called Joe's Dry Cleaning located at 471 Tompkins Avenue, Brooklyn, New York 11216. The July 8, 2005 complaint asserted nine causes of action, and alleged that respondent violated various provisions of Environmental Conservation Law (ECL) article 19, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) parts 201 and 232 from November 1999 to the present.

With the July 8, 2005 notice of motion and complaint, Department staff included a civil penalty calculation, and requested a total civil penalty of \$109,073. Department staff also requested an order from the Commissioner that would authorize Staff to seal respondent's fourth generation dry cleaning machine. In support of the motion for order without hearing, Department staff included: (1) an affidavit by Alexander Becker dated July 7, 2005; (2) notices of violation dated August 19, 2003 and May 6, 2005; and (3) an amended business certificate. Also, Department staff provided a copy of the signed domestic return receipt, which shows that respondent received the Department's July 8, 2005 notice of motion and complaint on July 22, 2005.

The July 8, 2005 notice of motion for order without hearing advised respondent that, pursuant to 6 NYCRR 622.12(b), he must file a response to Department staff's motion with the Chief Administrative Law Judge (ALJ) within 20 days from its receipt. The notice further advised respondent that his failure to answer Department staff's motion in a timely manner would constitute a default and waiver of his right to a hearing. Since service of Department staff's July 8, 2005 notice of motion and complaint upon respondent, the Office of Hearings and Mediation Services has not received any response from Mr. Joseph.

With a cover letter dated August 17, 2005, Department staff moved for a default judgment. With the August 17, 2005 default motion, Department staff included: (1) an affirmation by John F. Byrne, Esq., Assistant Regional Attorney from DEC Region 2, dated August 17, 2005; (2) a proposed order; and (3) copies of the papers that Department staff filed with respect to the July 8, 2005 motion for order without hearing. In addition, Department

staff subsequently provided an affidavit of service of the motion for order without hearing and the complaint upon Respondent sworn to March 31, 2006. In the August 17, 2005 default motion, Department staff requests the same relief requested in the July 8, 2005 motion for order without hearing and complaint.

### **Findings of Fact**

1. On July 11, 2005, Department staff served a notice of motion for order without hearing and complaint, both dated July 8, 2005, upon Adrien Joseph doing business as Joe's Dry Cleaning at 471 Tompkins Avenue, Brooklyn, New York 11216 by certified mail, return receipt requested. Adrien Joseph received the July 8, 2005 notice of motion and complaint on July 22, 2004.
2. The July 8, 2005 notice of motion for order without hearing advised respondent that within 20 days following receipt of the complaint, he was obliged to send a response to the Chief Administrative Law Judge at the Office of Hearings and Mediation Services, 625 Broadway, 1<sup>st</sup> Floor, Albany, New York 12233-1550. The notice also advised respondent that his failure to answer in a timely manner would result in a default and a waiver of his right to a hearing.
3. Respondent's time for serving a response to Staff's July 8, 2005 motion for order without hearing and complaint expired on August 11, 2005. Respondent has not filed any response in this matter.

### **Discussion**

The regulations at 6 NYCRR 622.12(a) authorize Department staff to commence an enforcement action with service of a motion for order without hearing and a complaint, which must include supporting affidavits reciting all the material facts and other available documentary evidence. The motion must further include a statement that a response must be filed with the Chief ALJ within 20 days of receipt of the motion by the respondent, and that failure to answer constitutes a default (see 6 NYCRR 622.12[b]).

Pursuant to 6 NYCRR 622.15(a), a respondent's failure to file a timely answer constitutes a default and a waiver of the respondent's right to a hearing. In such an event, DEC Staff may move for a default judgment. To obtain a default, Department staff must provide the following:

- (1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
- (2) proof of respondent's failure to file a timely answer; and
- (3) a proposed order. [See 6 NYCRR 622.15(b).]

Mr. Byrne's affirmation, the affidavit of service, and the copy of the signed domestic return receipt demonstrate that Department staff served the July 8, 2005 notice of motion for order without hearing and complaint upon respondent in a manner consistent with the requirements outlined at 6 NYCRR 622.3(a)(3) concerning the commencement of an enforcement proceeding. Staff's proof also shows that respondent received the July 8, 2005 notice of motion for order without hearing and complaint on July 22, 2005. The July 8, 2005 notice of motion and complaint included a statement about respondent's obligation to respond within 20 days after receiving the motion, and that his failure to file a timely response would constitute a default and waiver of respondent's right to a hearing.

Mr. Joseph's response to Department staff's July 8, 2005 notice of motion for order without hearing and complaint was due by August 11, 2005. Since service of the July 8, 2005 notice of motion and complaint, the Office of Hearings and Mediation has not received any response from respondent. Therefore, respondent has defaulted and waived his right to a hearing. Accordingly, Department staff is entitled to a default judgment as provided by 6 NYCRR 622.15.

Department staff's August 17, 2005 motion for default judgment includes a detailed civil penalty calculation. As noted above, Department staff included this analysis with its original motion for order without hearing and complaint. The July 8, 2005 complaint asserted nine causes of action and alleged that violations at respondent's dry cleaning establishment have occurred from November 1999 to the present. Given the lengthy duration and continuous nature of the violations, Department staff calculated a maximum civil penalty of \$142,414,000. I find that Staff has provided a reasoned explanation for the total civil penalty it seeks in the default motion, which is \$109,073. Of the \$109,073 total civil penalty, Staff requests that the Commissioner direct respondent to pay \$54,530 now, and suspend the remaining \$54,543 pending respondent's full compliance with all applicable regulations.

**Conclusions**

1. Respondent has defaulted and waived his right to a hearing in this matter.
2. Department staff have met the requirements of 6 NYCRR 622.15(b) for a motion for a default judgment.

**Recommendation**

The Commissioner should sign the proposed order prepared by Department staff and submitted with the August 17, 2005 motion for default judgment. The proposed order confirms the default and grants the relief requested by Department Staff in the July 8, 2005 complaint.