

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

In the Matter of Alleged Violations of
Article 19 of the New York State
Environmental Conservation Law ("ECL")
and Part 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.
D1-2002-1029-579

- by -

MILU INC.,

Respondent.

Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Milu Inc. by service of a notice of hearing and complaint, both dated May 20, 2005.

Milu Inc. owns and/or operates a perchloroethylene dry cleaning facility ("facility") at 555 Route 111 Hauppauge, New York. The complaint alleged violations of the Environmental Conservation Law ("ECL") and part 232 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

In accordance with 6 NYCRR 622.3(a)(3), the notice of hearing and complaint was hand delivered to the New York State Department of State on May 20, 2005, pursuant to Business Corporation Law § 306(b). Thereafter, also on May 20, 2005, an additional copy of the notice of hearing and complaint was sent by first class mail to respondent's last known address at 555 Route 111, Hauppauge, New York. Accordingly, Department staff satisfied the additional service requirements of CPLR 3215(g)(4) (see Matter of Polanaya Corp., Order of the Acting Commissioner, April 12, 2005, at 1).

According to the complaint, on September 21, 2000, a third-party inspector performed an inspection of respondent's dry cleaning facility on behalf of Department staff and identified certain deficiencies and violations documented in a Part 232 Dry Cleaning Compliance Inspection Report. As a result of these deficiencies and violations, Department staff's complaint alleged that respondent:

1. Failed to properly seal the vapor barrier at the facility, in violation of 6 NYCRR 232.6(a)(1);
2. Operated the facility without having timely applied for and received a registration certificate from the Department by the applicable deadline in 1999, in violation of 6 NYCRR 201-4 and 6 NYCRR 232.15; and
3. Operated the facility with a fugitive emission perchloroethylene leak of 442 parts per million detected at a pipe connection (392 parts per million over the limit), in violation of 6 NYCRR 232.7(h).

Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint expired on June 10, 2005, and has not been extended by Department staff. Respondent failed to file a timely answer or otherwise appear. Respondent also failed to appear at the pre-hearing conference held on June 28, 2005 at the Department's Region 1 headquarters in Stony Brook, New York. Accordingly, respondent is in default and has waived the right to a hearing.

Department staff filed a motion for default judgment, dated February 6, 2007, with the Department's Office of Hearings and Mediation Services. As required, because more than a year elapsed since the default, Department staff also served the motion on respondent by mail pursuant to CPLR 3215(g)(1) (see Matter of Singh [Makhan], Decision and Order of the Commissioner, March 19, 2004, at 2-3). The matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride, who prepared the attached default summary report. I adopt ALJ McBride's report as my decision in this matter, subject to the following comments.

Based upon the record, I conclude that the proposed civil penalty and remedial measures sought by Department staff to address the violations are authorized and appropriate. I also conclude that the remedial measures are authorized and warranted, and the dates recommended by staff by which respondent is to achieve compliance with applicable regulatory standards are authorized and reasonable.

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 against respondent Milu Inc. is granted.

II. Respondent is adjudged to be in default and to have waived the right to a hearing in this administrative 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 the provisions of ECL article 19 and 6 NYCRR 232.6(a)(1) on September 21, 2000 by failing to properly seal the vapor barrier at the facility.

IV. Respondent is adjudged to have violated the provisions of ECL article 19, and 6 NYCRR 201-4 and 6 NYCRR 232.15 on September 21, 2000 by operating the facility without having timely applied for and received a registration certificate from the Department by the applicable deadline in 1999.

V. Respondent is adjudged to have violated the provisions of ECL article 19, and 6 NYCRR 232.7(h) on September 21, 2000 by operating the facility with a fugitive emission perchloroethylene leak of 442 parts per million detected at a pipe connection.

VI. Respondent Milu Inc. is hereby assessed a civil penalty in the amount of two thousand five hundred dollars (\$2,500). The civil penalty shall be due and payable within thirty (30) days after receipt of this order by 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:

Michael J. Derevlany, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway, 14th Floor
Albany, New York 12233-5500

VII. Respondent Milu Inc. is hereby directed:

A. Within fifteen (15) days after receipt of this order, to properly seal the vapor barrier at the facility, and to have the facility inspected by a Registered Compliance Inspector. The dry cleaning machinery at the facility cannot be operated until the inspection required by this subparagraph A has taken place;

B. Within fifteen (15) days after receipt of this

order, to make all necessary repairs to ensure that the perchloroethylene concentration level at the facility is within the prescribed limit, and to have the facility inspected by a Registered Compliance Inspector. The dry cleaning machinery at the facility cannot be operated until the inspection required by this subparagraph B has taken place; and

- C. If respondent fails, within fifteen (15) days after receipt of this order, to take the corrective actions set forth in subparagraphs A and B of this paragraph VII, such failure shall be deemed grounds to seal all air contamination sources at the facility pursuant to 6 NYCRR 200.5.

VIII. All communications from respondent to the Department concerning this order shall be made to: Michael J. Derevlany, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th Floor, Albany, New York 12233-5500.

IX. The provisions, terms and conditions of this order shall bind respondent Milu Inc., and its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By:

Alexander B. Grannis
Commissioner

Dated: May 25, 2007
Albany, New York

TO: Milu Inc. (By certified mail)
c/o Vanderbilt Cleaners
555 Route 111
Hauppauge, New York 11788

John Navaretta, Esq. (By regular mail)
291 Jackson Avenue
Syosset, New York 11791

Michael J. Derevlany, Esq. (By regular mail)
New York State Department of
Environmental Conservation
Division of Environmental Enforcement
625 Broadway, 14th Floor
Albany, New York 12233-5500

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violation of
Article 19 of the Environmental Conservation
Law of the State of New York (ECL) and
Part 232 of Title 6 of the Official Compilation
of Codes, Rules and Regulations of the State
of New York (NYCRR)

Default Summary
Report

-By-

DEC Case No.
D1-2002-1029-579

Milu Inc.,
Respondent.

Proceedings

By notice of motion dated February 6, 2007, 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 the Environmental Conservation Law (ECL). It is alleged by DEC that respondent violated Article 19 of the ECL and Part 232 of 6 NYCRR by: (1) failing to properly seal a vapor barrier at the dry cleaning facility located at 555 Route 111 Hauppauge, New York (facility); (2) failing to apply for and receive a registration certificate for the Department before operating the dry cleaning facility; and (3) having fugitive emission concentrations in excess of 50 ppm of perc emanating from the facility. DEC submitted an affirmation of Attorney Michael J. Derevlany, Esq., a proposed summary report and order and proof of service of the notice of hearing and complaint on the respondent, by certified mail and service on the New York State Secretary of State on May 20, 2005.

As of the date of the motion, respondent has failed to appear and serve an answer or otherwise move, although the time to do so expired on or about June 10, 2005. Further, DEC Staff submitted proof that said notice of hearing and complaint directed respondent to appear for a pre-hearing conference on June 28, 2005. The affirmation of attorney Derevlany indicates that respondent failed to appear at said conference and did not obtain, nor request an adjournment of the conference.

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 are based upon the papers submitted, as identified above.

FINDINGS

1. On May 20, 2005 Staff served a notice of hearing and complaint on respondent Milu Inc.. The time to answer or otherwise move expired on June 10, 2005. No answer has been served to date.
2. The notice for hearing and complaint served on May 20, 2005 directed respondent to appear for a pre-hearing conference on June 28, 2005. No appearance was made by respondent at said conference.
3. Respondent has failed to comply with the regulations set forth in 6 NYCRR §232.6(a)(1), §232.7(h); and §232.15.
4. The motion for default was served more than one year after the commencement of the action and the respondent was served with the motion for default pursuant to CPLR 3215(f) & (g).
5. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR Part 622.15(b).

CONCLUSION

The motion for default judgment should be granted.

DATED: May 15, 2007
Albany, New York

/s/

Molly T. McBride
Administrative Law Judge

To: Michael J. Derevlaney, Esq.
NYS Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway
Albany, N.Y. 12233-5500

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