

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

In the Matter of the Alleged Violation
of Article 17 of the New York State
Environmental Conservation Law ("ECL")
and Part 612 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York
("NYCRR"),

ORDER

- by -

NYPD, BUILDING MAINTENANCE SECTION,

DEC Case No.
2-343552

Respondent.

By service of a notice of hearing and complaint dated May 6, 2004, the New York State Department of Environmental Conservation ("DEC" or "Department") staff commenced, pursuant to 6 NYCRR 622.3, an administrative enforcement proceeding against respondent NYPD, Building Maintenance Section. Certified mail service of the notice of hearing and complaint upon respondent was completed, pursuant to 6 NYCRR 622.3(a)(3), on May 6, 2004.

In the complaint, Department staff alleges that respondent is the owner of a petroleum bulk storage facility ("facility") located at Intelligence Division, 72 Poplar Street, Brooklyn, New York and that respondent failed to timely register its facility as required by 6 NYCRR 612.2. Department staff allege that the registration (PBS #2-343552) for respondent's facility expired on December 14, 2002. Records indicate that this facility was re-registered on November 5, 2003, a lapse in registration of eleven months. Accordingly, Department staff allege that respondent violated ECL 17-1009 and 6 NYCRR 612.2.

Respondent's time for serving an answer to the complaint, pursuant to 6 NYCRR 622.4(a), expired on May 26, 2004. Respondent failed to answer or move with respect to the complaint by that date, and such time to answer has not been extended.

On July 8, 2004, Department staff made a motion for a default judgment detailing respondent's failure to answer. The motion for default was accompanied by the notice of hearing and complaint, dated May 3, 2004, and an affirmation in support of motion for default judgment, submitted by Benjamin A. Conlon, Esq., Associate Attorney, Division of Environmental Enforcement

of the New York State Department of Environmental Conservation, 625 Broadway, 14th Floor, Albany, NY 12233-5500. It also contained the affidavit of mail service of Alyce M. Gilbert, a photocopy of the signed, certified mail receipt, and a proposed order.

The matter was assigned to Administrative Law Judge ("ALJ") Richard Wissler, who prepared the attached default summery report dated September 28, 2004. I adopt this report as my own, subject to my comments herein.

ECL 71-1929 provides that any person who violates any provision, fails to perform any duty or commits any offense described in titles 1 through 11 inclusive and title 19 of ECL article 17 shall be liable for a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. In addition, such person may be enjoined from continuing such violation as hereafter provided. Respondent's failure to timely re-register its facility warrants the penalty assessed below pursuant to ECL 71-1929.

NOW, THEREFORE, having considered this matter and being duly advised, it is ORDERED that:

I. Department staff's motion for default judgment against respondent NYPD, Building Maintenance Section, is granted.

II. Pursuant to 6 NYCRR 622.15, respondent is found to be in default. Accordingly, respondent is deemed to have admitted the factual allegations in the complaint and to have waived its right to a hearing in this enforcement proceeding.

III. Respondent is determined to have violated ECL 17-1009 and 6 NYCRR 612.2.

IV. Respondent shall pay a civil penalty in the amount of seven thousand, five hundred dollars (\$7,500). No later than 30 days after the date of this order, payment shall be made in the form of a certified or cashier's check or money order payable to the order of the "New York State Department of Environmental Conservation" and delivered to the Department at the following address: New York State Department of Environmental Conservation, Legal Affairs, 14th Floor, Attn: Benjamin A. Conlon, Esq., Associate Attorney, 625 Broadway, Albany, New York 12233-5500.

V. All communications between respondent and Department Staff concerning this order shall be made to Benjamin A. Conlon, Esq., Associate Attorney, New York State Department of

Environmental Conservation, 625 Broadway, 14th Floor, Albany, New York 12233-5500.

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

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Denise M. Sheehan, Acting
Commissioner

Dated: Albany, New York
February 22, 2005

To: (By Certified Mail)
NYPD
Building Maintenance Section
59-06 Brooklyn-Queens Expressway
Queens, New York 11377

(By Regular Mail)
Benjamin A. Conlon, Esq.
Associate Attorney
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, N.Y. 12233-5500

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**DEFAULT
SUMMARY REPORT**

- by -

NYPD, BUILDING MAINTENANCE SECTION,

DEC Case No.
2-343552

Respondent.

Proceedings

By notice of motion dated July 8, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against respondent concerning alleged violations of Article 17 of the Environmental Conservation Law ("ECL"). It is alleged by DEC that respondent violated Article 17 of the ECL by failing to timely register its petroleum bulk storage facility at Intelligence Division, 72 Poplar Street, Brooklyn, New York. In support of its motion, DEC submitted an affirmation of Associate Attorney Benjamin A. Conlon, a proposed order and proof of service of the notice of hearing and complaint on the respondent, by certified mail, return receipt on May 6, 2004.

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 May 26, 2004.

DEFAULT PROCEDURES

Section 622.15 of 6 NYCRR, "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 6, 2004 Staff served a notice of hearing and complaint on respondent NYPD, Building Maintenance Section. The time to answer or otherwise move expired on May 26, 2004. No answer has been served to date.
2. Respondent has failed to timely comply with the registration requirements set forth in 6 NYCRR 612.2 and ECL 17-1009 for its petroleum bulk storage facility located at Intelligence Division, 72 Poplar Street, Brooklyn, New York.
3. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR 622.15(b).

CONCLUSION

The motion for default judgment should be granted.

DATED: September 28, 2004
Albany, New York

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