

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

In the Matter of the Alleged Violations of Article 12 of the
New York State Navigation Law and Part 32
of Title 17 of the Official Compilation of Codes,
Rules and Regulations of the State of New York (“17 NYCRR”),

-by-

ADE RANTI,

Respondent.

ORDER

Case No.
R2-20121025-650

This administrative enforcement proceeding concerns the alleged failure of respondent Ade Ranti to comply with Article 12 of the New York State Navigation Law and Part 32 of Title 17 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (“17 NYCRR”). Respondent Ranti is the owner and landlord of a three-family apartment building at 355 Jefferson Avenue, Brooklyn, New York (Kings County Block 1830, lot 74) (the “site”). On March 1, 2010, respondent signed an order on consent no. R2-20090831-547 (the “consent order”), in connection with a spill of petroleum at the site. The consent order, which became effective on March 3, 2010, imposed a civil penalty of \$5,000 upon respondent and required respondent to develop and undertake remedial action for the site.

Staff of the New York State Department of Environmental Conservation (the “Department”) served respondent with a notice of hearing and complaint dated November 7, 2012. The complaint alleged two causes of action. The first cause of action included two counts. The first count was based upon respondent’s failure to pay in full the penalty imposed under the consent order. The second count was based upon respondent’s failure to submit the remedial investigation report required by the consent order to address petroleum contamination at the site. Pursuant to a letter dated July 6, 2010 from Department staff to respondent, respondent was to have submitted the remedial investigation report to Department staff by August 31, 2010, which it failed to do. According to the complaint, the violation under the first count ran daily from April 2, 2010 through the date of the complaint, and the violation under second count ran daily from September 17, 2010 through the date of the complaint.

The second cause of action alleged that respondent failed to immediately undertake containment of an illegal petroleum discharge at the site, in violation of Navigation Law § 176 and 17 NYCRR 32.5. According to the complaint, the violation ran daily from September 17, 2010 through the date of the complaint. As provided for in Navigation Law § 192, the maximum penalty for each day of violation of the Navigation Law is \$25,000.

The notice of hearing stated that at 10:00 a.m. on November 27, 2012, a pre-hearing conference would be held at the Department's Region 2 office, at 47-40 21st Street, Long Island City, New York. Prior to the date of the pre-hearing conference, respondent contacted Department staff and requested that the pre-hearing conference be rescheduled and that his time to answer be extended. Department staff agreed to reschedule the pre-hearing conference provided that the answer to the complaint was received by December 7, 2012. Respondent did not answer the complaint.

On December 17, 2012, Administrative Law Judge ("ALJ") Richard R. Wissler presided at a calendar call in the Region 2 office. At that calendar call, Department staff made an oral motion for default judgment, and offered documents in support of the motion, which were received into the record.

The matter was reassigned to ALJ Maria E. Villa, who prepared the attached default summary report, which I adopt as my decision in this matter. As set forth in the ALJ's report, respondent Ade Ranti failed to answer the complaint in this matter, and the ALJ recommended that Department staff's motion for a default judgment be granted. I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15.

Department staff requested an order directing respondent to comply immediately with the consent order by paying the outstanding penalty balance of \$4,250 and submitting the remedial investigation report, and, in addition, imposing a penalty of no less than \$10,000 for respondent's violation of Navigation Law § 176 and 17 NYCRR 32.5 and failure to comply with the consent order.

Based on this record, the \$4,250 outstanding penalty balance under the consent order is due and owing. I hereby impose an additional penalty of \$10,000 for the violations of Navigation Law § 176 and 17 NYCRR 32.5 and the failure to comply with the consent order that are alleged in the complaint, which penalty is authorized and appropriate. Respondent shall pay these penalties within 30 days of the service of this order upon him. I am also directing that respondent submit the remedial investigation report on the site to Department staff within 30 days of the service of this order upon respondent.

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 the complaint in this matter, respondent Ade Ranti waived his right to be heard at the hearing. Accordingly, the allegations of the complaint are deemed to have been admitted by respondent.
- II. Based upon the allegations of the complaint, and the documents submitted in support of the motion, respondent Ade Ranti has failed to comply with the

terms and conditions of the March 3, 2010 order on consent and is adjudged to have violated Navigation Law § 176 and 17 NYCRR 32.5.

- III. Within 30 (thirty) days of the service of this order upon respondent, respondent shall comply with the March 3, 2010 order on consent by paying the outstanding penalty balance of \$4,250 (four thousand two hundred fifty dollars) due pursuant to the consent order, and submitting the remedial investigation report to Department staff.
- IV. Within 30 (thirty) days of the service of this order upon respondent, respondent shall pay, in addition, a civil penalty in the amount of \$10,000 (ten thousand dollars).
- V. Payment of (A) the outstanding penalty balance of \$4,250 (four thousand two hundred fifty dollars) due pursuant to the consent order and (B) a civil penalty in the amount of \$10,000 (ten thousand dollars) pursuant to Navigation Law § 192, that is, a total amount of \$14,250 (fourteen thousand two hundred fifty dollars), shall be made by certified check, cashier's check or money order made payable to the order of the "Environmental Protection and Spill Compensation Fund." The payment of \$14,250 (fourteen thousand two hundred fifty dollars) shall be mailed or otherwise delivered to the following address:

New York State Department of Environmental Conservation
Region 2 office
47-40 21st Street
Long Island City, New York 11101
Attention: John K. Urda, Assistant Regional Attorney

- VI. Any questions or other correspondence regarding this order shall also be addressed to John Urda, Esq. at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent Ade Ranti, his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Joseph J. Martens
Commissioner

Dated: Albany, New York
January 16, 2013

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Article 12 of
the New York State Navigation Law and
Part 32 of Title 17 of the Official Compilation
of Codes, Rules and Regulations of the State of
New York (“17 NYCRR”),

DEFAULT SUMMARY
REPORT

CASE NO.
R2-20121025-650

-by-

ADE RANTI,

Respondent.

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Proceedings

Respondent Ade Ranti (“respondent”) was served by staff of the New York State Department of Environmental Conservation (“Department Staff”) with a notice of hearing, and a complaint, both dated November 7, 2012. Department Staff’s complaint alleged two causes of action related to a discharge of petroleum at property owned by respondent, a three-family apartment building at 355 Jefferson Avenue, Brooklyn, New York (Kings County Block 1830, lot 74) (the “Site”).

The first cause of action included two counts. The first count was based upon respondent’s failure to submit payments of a penalty imposed by an order on consent dated March 3, 2010 (the “Order”), No. R2-20090831-547. According to the complaint, the violation ran daily from April 2, 2010 through the date of the complaint. The second count was based upon respondent’s failure to implement the corrective action plan required by the Order, to address petroleum contamination at the Site. According to the complaint, the violation ran daily from September 17, 2010 through the date of the complaint.

The second cause of action alleged that respondent failed to immediately undertake containment of an illegal petroleum discharge at the Site, in violation of Navigation Law (“NL”) § 176 and Title 17 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, Section 32.5. According to the complaint, the violation under this second cause of action ran daily from September 17, 2010 through the date of the complaint.

The complaint seeks an order of the Commissioner (1) finding respondent in violation of Article 12 of the New York State Navigation Law, and Title 17 of NYCRR Part 32; (2) ordering respondent to pay the outstanding \$4,250 penalty required under the terms of the Order, and to submit a remedial investigation report to the Department within thirty days; (3) assessing a civil penalty of no less than \$10,000; and (4) granting such other and further relief as the Commissioner may deem just and proper.

Respondent was served with the notice of hearing and the complaint by certified mail, return receipt requested, on November 7, 2012. Pursuant to 6 NYCRR 622.4(a), an answer was due to be filed within twenty days of receipt of the notice of hearing and the complaint. The notice also advised respondent that a prehearing conference would be held on November 27, 2012, at 10:00 a.m. at the Department's Region 2 offices in Long Island City. Prior to the date of the prehearing conference, respondent contacted the Department and requested that the prehearing conference be rescheduled and that his time to answer be extended to December 7, 2012. Department Staff agreed to reschedule the prehearing conference provided that an answer to the complaint was received by December 7, 2012. Respondent failed to file an answer to the complaint.

A calendar call was held in Region 2 on December 17, 2012. Administrative law judge ("ALJ") Richard R. Wissler presided at the calendar call. During the calendar call, Department Staff made an oral motion for a judgment of default, pursuant to 6 NYCRR 622.15. Department Staff submitted the following documents in support of its motion, for the record:

1. Pleadings, including: notice of hearing, and complaint, all dated November 7, 2012, with attached exhibits:
 - a. Deed.
 - b. March 3, 2010 Order on Consent.
 - c. July 6, 2009 letter from Hiralkumar Patel, Environmental Engineer 1, NYSDEC, to Ade Ranti, regarding a remedial investigation work plan.
2. Affidavit of service of Edward Kang, sworn to November 7, 2012, with attached signed and date-stamped receipt for certified mail.
3. Proposed order.
4. December 17, 2012 Affirmation of John K. Urda, Esq. in Support of Penalty Request (the "Urda Affirmation").

The matter was re-assigned to ALJ Maria E. Villa, who prepared this default summary report.

Default Provisions

As applicable herein, the Department's default procedures in an enforcement proceeding, found at 6 NYCRR 622.15, provide:

(a) A respondent's failure to file a timely answer or, even if a timely answer is filed, failure to appear at the hearing or the pre-hearing conference (if one has been scheduled pursuant to section 622.8 of this Part) constitutes a default and a waiver of

respondent's right to a hearing. If any of these events occurs the department staff may make a motion to the ALJ for a default judgment.

(b) The motion for a default judgment may be made orally on the record ... and must contain:

- (1) proof of service upon the respondent of the notice of hearing and complaint...;
- (2) proof of the respondent's failure to appear or failure to file a timely answer;
and
- (3) a proposed order.

As the Commissioner stated in the decision and order in Matter of Alvin Hunt, d/b/a Our Cleaners (Decision and Order dated July 25, 2006, at 6), "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them [citations omitted]." Accordingly, the findings of fact set forth below are based upon the documents submitted into the record, as identified above.

Applicable Regulatory Provisions

Section 173 of the Navigation Law prohibits the discharge of petroleum. Section 176 provides that any person discharging petroleum in the manner prohibited by Section 173 "shall immediately undertake to control such discharge." The Navigation Law's penalty provision at Section 192 states that any person who violates any of the provisions of the Navigation Law,

or any rule promulgated thereunder or who fails to comply with any duty required by this article shall be liable to a penalty of not more than twenty-five thousand dollars for each offense in a court of competent jurisdiction. If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate and distinct offense.

Section 32.5 of 17 NYCRR states that "[a]ny person responsible for causing a discharge which is prohibited by section 173 of the Navigation Law shall take immediate steps to stop any continuation of the discharge and shall take all reasonable containment measures to the extent he is capable of doing so."

Findings of Fact

1. The respondent is the owner and landlord of property and a three-family apartment building located at 355 Jefferson Avenue, Brooklyn, New York (Kings County Block 1830, lot 74). Exhibit 1A.

2. On March 3, 2012, the parties entered into an Order on Consent, NYSDEC File No. R2-20090831-547. In the Order, respondent admitted violating the Navigation Law by failing to contain a prohibited discharge of petroleum. Exhibit 1B.
3. Pursuant to the Order, respondent agreed to pay a penalty of \$5,000 in seven monthly installments. Exhibit 1B.
4. On March 1, 2010, respondent submitted the first installment of the payments due under the Order. Respondent failed to submit any subsequent installments, and \$4,250 of the penalty remains unpaid. Exhibits 1 and 4.
5. Pursuant to the Order, respondent also agreed to complete a corrective action plan to investigate the extent of a spill at the Site which occurred on January 15, 2001 (NYSDEC Spill No. 0011230). The respondent did not submit the required remedial investigation report, and has not undertaken immediate containment of the spill, as required under the Navigation Law. Exhibits 1 and 1B.
6. On November 7, 2012, Department Staff served the respondent with the notice of hearing and the complaint, by certified mail, return receipt requested. The return receipt was signed and date-stamped, and returned to the Department. Exhibit 2.
7. The respondent failed to answer the complaint.

Discussion

The record of this proceeding demonstrates that respondent failed to comply with the terms of the March 3, 2010 Order on Consent. Respondent violated the Navigation Law by failing to contain a prohibited discharge of petroleum.

The record shows that respondent did not answer the complaint. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

According to the Urda Affirmation, the requested penalty amount is reasonable and appropriate. Exhibit 4. Department Staff requested an order directing the respondent to comply immediately with the Order by paying the outstanding penalty balance of \$4,250, as well as a penalty of \$10,000 for Navigation Law violations. As noted above, the maximum penalty for each day of a Navigation Law violation is \$25,000. Department Staff has alleged a continuing violation which began on April 2, 2010 with respect to the first count in the first cause of action, and which began on September 17, 2010 with respect to the second count in the first cause of action. With respect to the second cause of action, Department Staff alleged a continuing violation which began on September 17, 2010. As detailed in the complaint, respondent has failed to pay the penalty imposed in the Order, despite numerous attempts by Department Staff to facilitate compliance.

Based on this record, the \$4,250 outstanding penalty balance under the Order is due and owing, and the requested total penalty of \$10,000 for the violations alleged in the complaint is authorized and appropriate.

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 for failing to answer the complaint;
2. Finding respondent in violation of Section 176 of the Navigation Law, and Section 32.5 of 17 NYCRR, as alleged in the complaint;
3. Directing respondent to pay the outstanding penalty balance of \$4,250 (four thousand two hundred fifty dollars) imposed under the March 3, 2010 Order on Consent;
4. Directing respondent to pay a total civil penalty in the amount of \$10,000 (ten thousand dollars); and
5. Directing such other and further relief as he may deem just and proper.

/s/

Maria E. Villa
Administrative Law Judge

Dated: Albany, New York
December 26, 2012

EXHIBIT CHART
Matter of Ade Ranti – Region 2
Calendar Call: December 17, 2012
Edirol File No. 040117110053

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	Pleadings, including: notice of hearing and pre-hearing conference, and complaint, all dated November 7, 2012	✓	✓	Department Staff	
1A	Deed	✓	✓	Department Staff	
1B	March 3, 2010 Order on Consent	✓	✓	Department Staff	
1C	July 6, 2010 letter from Hiralkumar Patel, NYSDEC, to Ade Ranti re: Remedial Investigation Work Plan	✓	✓	Department Staff	
2	Affidavit of Service by Edward Kang, sworn to November 8, 2012, with attached signed and date-stamped return receipt for certified mail and USPS Track and Confirm	✓	✓	Department Staff	
3	Proposed Order	✓	✓	Department Staff	
4	December 17, 2012 Affirmation of John K. Urda, Esq. in Support of Penalty Request	✓	✓	Department Staff	