

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

**ORDER**

DEC Case No.  
PBS 2-601106NBT

-by-

**906 EAGLE AVENUE HOUSING DEVELOPMENT FUND CORPORATION,**

Respondent.

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On July 25, 2013, an adjudicatory hearing was convened before Richard R. Wissler, 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 906 Eagle Avenue Housing Development Fund Corporation (“HDFC”) violated 6 NYCRR 612.2 by failing to reregister its petroleum storage facility located at 906 Eagle Avenue, Bronx, New York (“facility”), within 30 days of the transfer of ownership of the facility to it.

ALJ Wissler prepared the attached hearing report, which I adopt as my decision in this matter. As set forth in the ALJ’s hearing report, respondent 906 Eagle Avenue HDFC 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 June 21, 2013, 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 July 23, 2013, 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 recommended that Department staff’s motion for default be granted (see Hearing Report, at 4), and I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. Furthermore, at the hearing Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see Hearing Report, at 4). Accordingly, staff is entitled to a judgment based on record evidence.

Department staff, in its papers, sought a penalty of ten thousand dollars (\$10,000). Respondent has failed to reregister its facility for more than fifteen years, and the civil penalty requested by staff is authorized and appropriate (see 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2). Respondent is also directed to submit to the Department a petroleum bulk storage facility re-registration application, 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 906 Eagle Avenue Housing Development Fund Corporation waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent 906 Eagle Avenue Housing Development Fund Corporation is adjudged to have violated 6 NYCRR 612.2 for failing to reregister its petroleum storage facility located at 906 Eagle Avenue, Bronx, New York, within 30 days of the transfer of ownership of the facility to it.
- III. Within fifteen (15) days of the service of this order upon respondent, respondent shall submit to the Department a petroleum bulk storage facility re-registration application, plus applicable registration fees.
- IV. Within fifteen (15) days of the service of this order upon respondent, respondent 906 Eagle Avenue Housing Development Fund Corporation shall pay a civil penalty in the amount of ten thousand dollars (\$10,000.00) 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 re-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.

VII. The provisions, terms and conditions of this order shall bind respondent 906 Eagle Avenue Housing Development Fund Corporation, and its 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: October 27, 2013  
Albany, New York

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Article 17 of  
the Environmental Conservation Law of the State of New York  
("ECL") and Section 612.2 of Title 6 of the Official  
Compilation of Codes, Rules and Regulations of the State of  
New York ("6 NYCRR"),

HEARING REPORT

DEC CASE NO:  
PBS 2-601106NBT

-by-

906 EAGLE AVENUE HOUSING DEVELOPMENT FUND  
CORPORATION ("HDFC"),

Respondent.

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Procedural History

Respondent 906 Eagle Avenue Housing Development Fund Corporation ("HDFC")<sup>1</sup> was served with a notice of hearing and complaint, dated May 22, 2013, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 612.2, for failure to reregister its petroleum storage facility located at 906 Eagle Avenue, Bronx, New York 10456, within 30 days of the transfer of ownership of the facility to it. 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 reregister its petroleum storage facility within fifteen (15) days of the service of the Commissioner's Order; and (4) granting such other and further relief as the Commissioner may deem just and proper.

Inasmuch as respondent is an active domestic business corporation in the State of New York, service of the notice of hearing and complaint on respondent was made by serving the New York State Department of State on May 24, 2013. Consistent with CPLR 3215(g)(4), respondent was also served with the notice of hearing and complaint by regular mail on May 24, 2013. Respondent failed to file an answer to the complaint and failed to appear at a pre-hearing conference scheduled for June 21, 2013, as directed in the cover letter served with the notice of hearing and complaint.

As stated in the notice of hearing, on July 23, 2013, an adjudicatory hearing was convened before Administrative Law Judge ("ALJ") Richard R. Wissler 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

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<sup>1</sup> Records from the New York State Department of State (Staff Exhibit 3) indicate that respondent's correct name is "906 Eagle Avenue Housing Development Fund Corporation," not "906 Eagle Avenue HDFC" as pleaded in the complaint. Consistent with CPLR 2001, the caption and the complaint are corrected to state respondent's correct name.

represented by Scott Caruso, Esq., Section Chief, Spill and Bulk Storage Section, Office of General Counsel, 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 the respondent to appear. The ALJ advised that the hearing, in the absence of respondent, would be convened on a subsequent date.

On July 25, 2013, the adjudicatory hearing was convened before ALJ Wissler at the Department's Central Office at 625 Broadway, Albany, New York 12233. At this stage of the proceedings and, pursuant to an order of the Appellate Division, Third Department, issued in accordance with its Rules at 22 NYCRR 805.5, Department staff was represented by legal intern Caitlin Davie under the supervision of Scott W. Caruso, Esq., Section Chief of the Department's Spill and Bulk Storage Section. Department staff orally renewed its motion for a default judgment, and also sought judgment on the merits.

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, eight (8) 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.

(b) Transfer of ownership. If ownership of the facility changes, the new owner must reregister the facility with the department within 30 days of ownership transfer.

(c) New facilities. The owner must register any new facility with the department before it is placed in service.

(d) Substantially modified facilities. Within 30 days prior to substantially modifying a facility, the owner must notify the department of such modification on forms supplied by the department.

#### Findings of Fact

1. Respondent 906 Eagle Avenue Housing Development Fund Corporation (“HDFC”) is the owner of a petroleum storage facility having a capacity of over 1,100 gallons located at 906 Eagle Avenue, Bronx, New York 10456 (“facility”). In particular, petroleum storage tank number 1 at the facility has a capacity of 3,000 gallons and is located aboveground. (Staff Exhibits 4, 6 and 7.)
2. Respondent is an active domestic business corporation in the State of New York. (Staff Exhibit 3.)
3. Pursuant to a registration application filed by the then owner of the facility, the City of New York Department of Housing Preservation and Development, dated September 15, 1992, the Department, on October 23, 1992, issued Petroleum Bulk Storage (“PBS”) Certificate Number 2-601106, registering the PBS facility. This registration expired on October 22, 1997. Moreover, in bold capital letters, at the bottom of the Certificate is the following declaration: “THIS REGISTRATION CERTIFICATE IS NON-TRANSFERABLE.” (Staff Exhibits 6 and 7.)
4. On June 30, 1998, the City of New York Department of Housing Preservation and Development, by deed, transferred all right, title and interest in the facility to respondent 906 Eagle Avenue HDFC, the facility’s current owner. This deed is recorded in the Office of the City Register of the City of New York, Reel 1712 at Page 1250. (Staff Exhibit 4.)
5. Brooke Turallo is a Legal Assistant in the Department’s Office of General Counsel’s Petroleum Spill and Bulk Storage (“PBS”) Section who is authorized to access, search and inspect the Department’s unified information system (“UIS”). The UIS is a database maintained by the Department that contains 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 July 24, 2013, Brooke Turallo searched the petroleum storage facility records contained in the Department’s UIS for any petroleum facility registration or renewal registration or any petroleum storage facility re-registration filed by respondent for the facility. (Testimony of Brooke Turallo.)
7. As a result of her search, Brooke Turallo determined that respondent had not

reregistered the facility at any time after assuming its ownership on June 30, 1998. (Testimony of Brooke Turallo; Staff Exhibit 4.)

8. As shown by Receipt for Service No. 201305280273 issued by the New York State Department of State, respondent was served on May 24, 2013, pursuant to section 306 of the Business Corporation Law with a notice of hearing and complaint dated May 22, 2013, alleging a violation of ECL 17-1009 and its implementing regulation, 6 NYCRR 612.2, for failure to reregister its petroleum storage facility located at 906 Eagle Avenue, Bronx, New York 10456, within 30 days of the transfer of ownership of the facility to it. Consistent with CPLR 3215(g)(4), the notice of hearing and complaint was also served on respondent by regular mail on May 24, 2013. (Staff Exhibits 2 and 5.)
9. Respondent failed to file an answer to the complaint; failed to appear at a pre-hearing conference scheduled for June 21, 2013, 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 July 23, 2013, as directed in the notice of hearing. (Hearing Record.)

#### Discussion

Department staff's proof presents a prima facie case demonstrating that respondent failed to reregister its petroleum storage facility located at 906 Eagle Avenue, Bronx, New York 10456, within 30 days of the transfer of ownership of the facility to it, in violation of 6 NYCRR 612.2.

The record shows that Department staff served the notice of hearing and complaint upon respondent; and that respondent failed to file an answer to the complaint; failed to appear at a pre-hearing conference scheduled for June 21, 2013, 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 July 23, 2013, 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 hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent failed to reregister its petroleum storage facility within 30 days of the transfer of ownership of the facility to it, in violation of 6 NYCRR 612.2. The Department is entitled to judgment upon the facts proven.

Department staff's proposed order and the \$10,000 civil penalty it seeks are consistent with the Department's penalty policy as well as 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 in default pursuant to the provisions of 6 NYCRR 622.15;
2. Finding respondent in violation of 6 NYCRR 612.2 for failure to reregister its petroleum storage facility located at 906 Eagle Avenue, Bronx, New York 10456, within 30 days of the transfer of ownership of the facility to it, based upon the proof adduced at the adjudicatory hearing;
3. Directing respondent to submit a re-registration application to the Department for the above facility;
4. Directing respondent to pay a civil penalty in the amount of ten thousand dollars (\$10,000.00); and
5. Directing such other and further relief as he may deem just and proper.

/s/

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Richard R. Wissler  
Administrative Law Judge

Dated: Albany, New York  
August 9, 2013



**EXHIBIT CHART – PBS EXPEDITED PROCEEDINGS**

*Matter of 906 Eagle Avenue HDFC – Region 2 – DEC Case No. 2-601106NBT*  
*July 25, 2013*  
Edirol File No. 040824105812

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	June 4, 2013, order (Peters, P.J.) for appointment of law interns, with consent to appearance of Caitlin Davie	✓	✓	Department Staff	
2	Pleadings, including: cover letter, notice of hearing, complaint, and statement of readiness (all dated May 22, 2013), with affidavit in support of Brooke Turallo, sworn to May 22, 2013	✓	✓	Department Staff	
3	New York State Department of State Entity Information webpage	✓	✓	Department Staff	
4	Deed	✓	✓	Department Staff	
5	Affidavit of Service of Brooke Turallo, sworn to July 24, 2013, including NYS Department of State receipt	✓	✓	Department Staff	
6	PBS Facility Information Report	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
7	PBS Application and PBS Certificate 2-601106, issued October 23, 1992; expired October 22, 1997	✓	✓	Department Staff	
8	Affidavit of Caitlin Davie, sworn to July 24, 2013	✓	✓	Department Staff	