

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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),

**RULING OF THE
COMMISSIONER**

DEC Case No.
PBS 2-478989

-by-

96 ARDEN OWNERS CORPORATION,

Respondent.

By order dated August 10, 2010 (Order) issued on respondent 96 Arden Owners Corporation's default, Commissioner Alexander B. Grannis of the New York State Department of Environmental Conservation (Department) assessed a civil penalty in the amount of ten thousand dollars (\$10,000) upon respondent. The penalty was assessed for respondent's failure to renew the registration of the petroleum storage facility it owns at 96 Arden Street, New York, New York (facility) in violation of 6 NYCRR 612.2. In addition, the Commissioner directed that respondent file a renewal registration with the Department within fifteen (15) days of the service of the order upon it. No payment of the civil penalty was received (see email dated September 27, 2017 from DEC Attorney Deborah Gorman to Assistant Commissioner Louis Alexander).

Records of the New York State Department of Environmental Conservation (Department) indicated that respondent's facility was registered under petroleum bulk storage (PBS) number 2-478989, that the certificate had not been renewed and, accordingly, it was under that number that Department staff initiated the enforcement action in 2010.

On September 21, 2017, Department staff filed a motion with the Department's Office of Hearings and Mediation Services (OHMS) to vacate the Order on the ground that respondent has held a valid PBS certificate for the facility under a different PBS number, 2-247642. A copy of the motion to vacate was also served by first class mail on that date on respondent (see Affirmation of Deborah Gorman, Esq., dated September 27, 2017, ¶ 3).

Department attorney Deborah Gorman, in an affirmation dated September 21, 2017 (Affirm), states that the Department recently became aware of the duplicate registration for this facility when respondent timely filed a renewal application for the facility under PBS number 2-247642 (Affirm ¶ 6). Department staff advises that it would not have commenced the 2010 proceeding if it had been aware of this duplicate registration (see id. ¶ 7), and notes that the facility has been registered by respondent "throughout the time in question" (id. ¶ 10; see also id. ¶ 11). Subsequent to the filing of the September 21, 2017 motion to vacate, Department staff has

provided a copy of the current PBS certificate for the facility to the Office of Hearings and Mediation Services.

Department staff, in its papers, has described procedures it now employs to identify duplicate registrations (see id. ¶ 8). I note, however, that this matter could have been expeditiously resolved at the outset if respondent had participated or otherwise responded in the 2010 proceeding. If respondent had done so and furnished the valid certificate, the earlier proceeding would have been terminated prior to the issuance of the Order.¹

Based on the record before me, granting Department staff's motion to vacate the Order is warranted.

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

- I. Department staff's motion to vacate the Commissioner's order dated August 10, 2010 in the Matter of 96 Arden Owners Corporation is granted, and the order is hereby vacated.
- II. I direct that the Office of Hearings and Mediation Services add a notation, at the beginning of the copy of the August 10, 2010 order in the Matter of 96 Arden Owners Corporation posted on the Department's website, stating that the order has been vacated.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____/s/_____
Basil Seggos
Commissioner

Dated: October 3, 2017
Albany, New York

¹ Although Department staff references the date of the Order to be August 3, 2010, the date of the Order is August 10, 2010. August 3, 2010 is the date of Administrative Law Judge Richard R. Wissler's hearing report to the Commissioner.