STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Articles 17 and 25 of the Environmental Conservation Law ("ECL") and Parts 661 and 751 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

- by -

JOHN AMABILE and ROSE AMABILE, d/b/a ANNADALE LAUNDRIES,

Respondent.

ORDER

DEC Case No. CO-2-19990630-57

Staff of the New York State Department of Environmental Conservation ("Department") move for summary judgment against John Amabile and Rose Amabile ("respondents") on a complaint dated April 14, 2005. The complaint, together with a notice of hearing, was served upon respondents by certified mail.

The matter was assigned to Administrative Law Judge ("ALJ") Helene G. Goldberger, who prepared the attached ruling. I adopt the ALJ's ruling as my decision in this matter, subject to the following comments.

Respondents failed to file an answer to the Department's complaint.[1] Notwithstanding respondents' default in answering, staff does not seek a default judgment pursuant to section 622.15 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). Instead, Department staff seeks summary judgment. Thus, staff motion is in the nature of a motion for order without hearing under the Department's regulations (see 6 NYCRR 622.12).

---

[1] I do not accept respondents' May 18, 2005 letter as an answer. From what can be made of the correspondence, the letter does not discuss the April 14, 2005 complaint, and fails to contain any of the elements of an answer. At most, it appears to constitute a response to settlement negotiations. Even assuming the letter constituted an answer, it was filed late.

In addition to failing to answer the complaint, respondents also failed to oppose staff's motion. Respondents have therefore waived the opportunity to raise any material issue of fact which would require a hearing.

The evidence submitted by staff establishes that respondents were the owners and operators of Annadale Laundries, a laundry facility located at 30 Sneden Avenue, Staten Island, New York. The evidence also establishes that respondents modified the sewage system at the facility to route "greywater" from their laundry machines through a pipe that exited the building and ran across an adjacent lot, and discharged onto the sidewalk adjacent to the facility. After discharging from the pipe, the greywater crossed the sidewalk, and flowed into a drainage basin that ultimately discharges into the Richmond Creek tidal wetlands area known as "Sweetbrook." Greywater discharges from the facility were observed on nine different occasions in 1998. The evidence also establishes that respondents willfully installed the pipe to avoid having to pump out the facility's septic system more frequently, and that the discharges continued after warnings by an Environmental Conservation Officer ("ECO") that such discharges were illegal and had to cease.

I agree with the ALJ that Department staff is entitled to summary judgment on the issue of respondents' liability for those causes of action that alleged the discharge of greywater from a point source or outlet without a permit. At the time of the discharges, the Environmental Conservation Law ("ECL") recognized greywater as a form of sanitary sewage (see ECL 17-0303[5][k]).[2] "Sewage" is a form of "pollutant" (see ECL 17-0105[17]). The discharges from the pipe and into the drainage basin constituted the use of an "outlet or point source" for the discharge into the waters of the State. The record also establishes that respondents had no permit for the greywater discharges. Staff also established that the discharges occurred on nine separate occasions in 1998. Thus, Department staff is entitled to summary judgment for the violations of ECL 17-0505,

[2] ECL 17-0303(5)(k) was repealed effective October 29, 2005. A new title 6 was added to ECL article 15 (see L 2005, ch 619) which defines "greywater" as "untreated wastewater from bathtubs, showers, washing machines, dishwashers and sinks, but shall not include discharges from toilets or urinals or industrial discharges."

ECL 17-0701(1)(a), and ECL 17-0803, and 6 NYCRR former 751.1(a)[3] charged in second, third, fifth, and eighth causes of action, respectively (see Matter of Cole, Order of the Commissioner, May 13, 1994 [discharge from laundry to the waters of the State without a SPDES permit constitutes a violation of ECL 17-0803]).

With respect to the fourth cause of action, ECL 17-0701(1)(b) prohibits the modification without a permit of a "disposal system for the discharges of sewage" that materially alters the method or effect of treating or disposing of the sewage. The evidence shows that respondents modified their facility's sewage collection system to avoid their septic system and thus violated ECL 17-0701(1)(b). Accordingly, summary judgment may be granted on the fourth cause of action.

I also agree with the ALJ that summary judgment may be granted on the issue of liability for the sixth and seventh causes of action. In those causes of action, staff alleged that respondents' discharge of greywater into the Sweetbrook portion of Richmond Creek, a tidal wetland, without a permit violated ECL 25-0401(1) and 6 NYCRR 661.8. ECL 25-0401(1) prohibits, among other things, the filling, dumping, or "any other activity" within or immediately adjacent to an inventoried wetland "which may substantially impair or alter the natural condition of the tidal wetland area" (ECL 25-0401[2]). The implementing regulations include as a prohibited activity the "[n]ew discharge of any pollutant requiring a SPDES permit" into a tidal wetland without such a permit (see 6 NYCRR 661.5[b][44]; see also 6 NYCRR 661.8). Thus, staff have shown that ECL 25-0401(1) and 6 NYCRR 661.8 were violated.

For the reasons stated by the ALJ in her ruling, Department staff is not entitled to summary judgment on the first cause of action alleging that respondents violated ECL 17-0501(1). Liability for a violation of this provision was not established (see, e.g., Matter of Morgan Oil Terminals Corp., Order of the Commissioner, Oct. 17, 1994; Matter of Kent, Order of the Commissioner, Dec. 7, 1992).

Furthermore, for the reasons stated by the ALJ, the circumstances of this case warrant imposing a penalty in the amount of $100,000. The violations established are serious, involving the repeated discharge of greywater into the waters and

---

[3] Former section 751.1(a) of 6 NYCRR was repealed effective May 11, 2003. Former section 751.1(a) has been replaced by 6 NYCRR 750-1.4(a).

tidal wetlands of the State without a permit. Respondents admitted that they took these measures willfully in order to avoid the costs of proper disposal of the greywater. In addition, respondents continued their illegal activity after multiple warnings, and respondents repeatedly failed to cooperate with staff's efforts to resolve the matter. Accordingly, I accept the ALJ's recommended penalty.

I do not adopt, however, the ALJ's discussion concerning the potential multiplicity of the violations established. The test for whether charged violations are multiplicitous focuses on the elements of the offense charged and whether each offense contains an element not contained in the other offense (see Matter of Wilder, Supplemental Order of the Acting Commissioner, Sept. 27, 2005, adopting ALJ Hearing Report, at 9-11; Matter of Steck, Commissioner's Order, March 29, 1993, at 5). The test is not whether the offenses all relate to the same illegal action. I conclude, however, that because the penalty imposed falls within the statutory maximum for nine occurrences of a single violation of ECL article 17, it need not be determined how many separate offenses were violated in this case for purposes of calculating the penalty.

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

I. Pursuant to 6 NYCRR 622.12, Department staff's motion for summary judgment is granted in part and otherwise denied.

II. Respondents John Amabile and Rose Amabile are adjudged to have violated ECL 17-0505, ECL 17-0701(1)(a), and ECL 17-0803, and 6 NYCRR former 751.1(a) by discharging greywater from an outlet or point source into the waters of the State without a permit. Respondent committed the violations on nine separate occasions in 1998.

III. Respondents John Amabile and Rose Amabile are adjudged to have violated ECL 17-0701(1)(b) by modifying their laundry facility's disposal system for the discharge of sewage in a manner that materially altered the method and effect of treating and disposing of the greywater.

IV. Respondents John Amabile and Rose Amabile are adjudged to have violated ECL 25-0401(1) and 6 NYCRR 661.8 by discharging greywater in a tidal wetland without a permit. Respondents committed the violations on nine separate occasions in 1998.

V. Respondents John Amabile and Rose Amabile are hereby assessed a civil penalty in the amount of one hundred thousand dollars ($100,000). The civil penalty shall be due and payable within thirty (30) days after service of this order upon respondents. 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: Scott Crisafulli, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th Floor, Albany, New York 12233-5550.

VI. All communications from respondents to the Department concerning this order shall be made to Scott Crisafulli, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 625 Broadway, 14th Floor, Albany, New York 12233-5550.

VII. The provisions, terms and conditions of this order shall bind respondents John Amabile and Rose Amabile, and their agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Denise M. Sheehan
Commissioner

Dated: July 12, 2006
Albany, New York

TO: Mr. John Amabile (By Certified Mail)
76 Sandalwood Drive
Staten Island, New York 10308-1847

Ms. Rose Amabile (By Certified Mail)
76 Sandalwood Drive
Staten Island, New York 10308-1847

Scott Crisafulli, Esq. (By Regular Mail)
New York State Department
of Environmental Conservation
Division of Environmental Enforcement
625 Broadway, 14th Floor
Albany, New York 12233-5550

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

----------X	**Ruling on**
In the Matter of the Alleged Violations of Articles 17 and 25 of the Environmental Conservation Law and Parts 661 and 751 of Title 6 of the New York Compilation of Codes, Rules and Regulations	**Staff's Motion for Order Without Hearing**
-by-	**DEC File No: CO2-19990630-57 CO2-19990630-58**

John Amabile and Rose Amabile
d/b/a Annadale Laundries
76 Sandalwood Drive
Staten Island, NY 10308-1847,

Respondents.

----------X

Summary of Ruling

Administrative Law Judge (ALJ) Helene G. Goldberger of the New York State Department of Environmental Conservation's (DEC or Department) Office of Hearings and Mediation Services (OHMS) recommends to the Commissioner that the Department staff's motion for an order without hearing be partially granted and the relief recommended by the ALJ be ordered.

Proceedings

After over four years of attempts to resolve the violations stemming from the respondents' illegal discharge of gray water from their laundromat, Annadale Laundries, located at 30 Sneden Avenue, Staten Island, New York, the Department staff commenced this proceeding against respondents John Amabile and Rose Amabile d/b/a Annadale Laundries by personal service of a notice of hearing and complaint on January 23 and 26, 2002, respectively. See, Exhibits O and P annexed to staff's affirmation in support of this motion. The respondents requested a postponement of the hearing in order to get more information and the DEC staff granted the adjournment. Subsequently, the respondents shut down their facility, changed their phone numbers, and moved. Department staff served a second notice of hearing and complaint on the respondents by certified mail on April 14, 2005. See, Exhibits S and S(b). Staff made attempts to settle this matter; however, they were not successful. On May 23, 2005, the staff

received a handwritten note from the respondents which staff has identified as respondents' answer. See, Exhibit A to staff's affirmation in support of its motion.

On or about August 19, 2005, staff served its motion for order without hearing on the respondents by certified mail. To date, there has been no response received by the Department to this motion.

In its complaint, staff sets out eight causes of action in which it alleges that respondents discharged gray water from their commercial laundromat into the waters and tidal wetlands of the State without a permit. Staff requests a penalty of $30,000 and an order prohibiting the respondents from discharging gray water in the future.

Staff's recitation of the uncontested facts of this matter indicates that its motion should be granted in part.

FINDINGS OF FACTS

1. Respondents, John Amabile and Rose Amabile, d/b/a Annadale Laundries, operated a laundromat at 30 Sneden Avenue, Staten Island, New York from February 13, 1981 until at least November 2, 1998.

2. On July 24, 1998, Environmental Conservation Officer (ECO) Jonathan Fritz observed a discharge of gray water from a pipe coming from Annadale Laundries located in the Annadale Plaza and onto the sidewalk on Sneden Avenue. The discharged water flowed from Sneden Avenue to a drainage basin that discharges into the Richmond Creek tidal wetlands area known as "Sweetbrook." See, Exhibits B, C, D, E, F, G, and H annexed to staff affirmation in support of motion.

3. On July 24, 1998, John Amabile admitted to ECO Fritz that he piped this discharge from his facility, the Annadale Laundries, into the street in order to avoid having to pump out his septic system as frequently. See, Exhibit B. The ECO directed Mr. Amabile to cease discharging as this action was in violation of the ECL. Id. Mr. Amabile agreed to discharge into the facility's septic system in the future. Id.

4. On August 16, 1998, ECO Fritz again observed this discharge from the respondents' facility and issued five DEC appearance tickets to the respondents by personally serving them with the tickets. See, Exhibits B and I.

5. On August 17, 1998, ECO Fritz and ECO Peinkofer observed the same cloudy, odoriferous water from the pipe connected to respondents' facility. See, Exhibit B.

6. On September 9, 1998, ECO Fritz observed another discharge from the facility. See, Exhibit M.

7. On September 21, 1998, staff served a "Cease and Desist" order on the respondents by certified mail. See, Exhibit N.

8. On October 2, 4, 16, 18 and November 2, 1998, ECO Fritz observed additional discharges from the facility. See, Exhibit M.

9. On August 19, 1999, DEC served the respondents with a consent order by certified mail. See, Exhibit J.

10. On or about August 23, 1999, the respondents returned the consent order to the Department unsigned. See, Exhibit L.

11. On January 23 and 26, 2002, Police Officer Steven Farrand personally served a notice of hearing and complaint on John Amabile and Rose Amabile, respectively. See, Exhibits O and P.

12. On February 14, 2002, the date scheduled for the pre-hearing conference, the Department staff received a letter from the respondents requesting an adjournment of the hearing so that they could "gather up more information for this case." See, Exhibit Q.

13. On March 27, 2002, at the respondents' request, DEC staff sent "Financial Inability to Pay" forms; however, the respondents did not respond. Crisafulli Aff., ¶ 22.

14. Without any notification to Department staff, respondents changed their residence and phone number and closed the laundromat. Crisafulli Aff., ¶ 23.

15. On April 14, 2005, DEC staff located residential property owned by the respondent Rose Amabile and served the respondents with a notice of hearing and complaint. See, Exhibits R, S and S(a); Crisafulli Aff., ¶ 24.

16. On April 19, 2005, respondent John Amabile requested that staff give the respondents until May 20, 2005 to answer the complaint. Staff agreed to this extension but did not change the

date of the pre-hearing conference scheduled for May 11, 2005. Crisafulli Aff., ¶25.

17. The respondents did not attend the May 11 conference even though staff reminded Mr. Amabile of the conference on two occasions prior to the date of the meeting. Crisafulli, Aff., ¶¶ 25, 28.

18. From May 16, 2005 through June 5, 2005, settlement negotiations continued between the respondents and Department staff. Although the respondents agreed to a penalty which was incorporated into a consent order sent to the respondents on June 6, 7 and July 6, 2005, the respondents never returned the order. Crisafulli Aff., ¶¶ 31, 34-40; Ex. V.

19. On May 23, 2005, DEC staff received correspondence from respondents that it has described as respondents' answer. Crisafulli Aff., ¶ 32; Exhibit A. This document is a handwritten note that does not address the allegations in the complaints.

DISCUSSION

Pursuant to 6 NYCRR § 622.12(a), staff has supported its motion for an order without hearing with the affirmation of DEC Attorney Scott Crisafulli as well as the memorandum of ECO Jonathan Fritz dated August 17, 1998, the photographs of the actual discharges taken by ECO Fritz, the tickets issued to the respondents, and the copies of the consent orders, pleadings, and correspondence sent to the respondents, as well as the proofs of service of these documents.[1]

The respondents have failed to submit any response to the staff's motion. Thus, there can be no doubt that summary judgment in favor of staff is appropriate insofar as staff has supported its claims as the respondents "failed to establish the existence of any material issue of fact which would require a hearing." Edgar v. Jorling, 225 AD2d 770 (2d Dep't 1996); 6

[1] While ordinarily, a motion for summary judgment is not sufficiently supported by an attorney's affirmation, in this matter, the affirmation of DEC attorney Scott Crisafulli can be properly relied upon for the attorney's personal knowledge of the facts regarding the staff's communications with the respondents and the history of the respondents' lack of cooperation and compliance. With respect to the facts relating to the specific violations, I rely upon the information provided by those with personal knowledge, i.e., ECO Fritz.

NYCRR § 622.12(c).

Staff has met its burden in proving that respondents, who owned and operated the subject facility, are in violation of ECL §§ 17-0505 (the making or use of an outlet or point source that discharges into the waters of the state without a valid state pollutant discharge elimination system [SPDES] permit); 17-0701(1)(a) (make or use an outlet or point source until a SPDES permit has been issued); 17-0701(1)(b) (construct or operate a disposal system for the discharge of sewage, industrial wastes, or other wastes without a SPDES permit); 17-0803 (unlawful to discharge wastes into the waters of the state without a SPDES permit); 25-0401(1) (prohibits the dumping or filling of any tidal wetlands as well as any activity that would impair a tidal wetlands without a permit); 6 NYCRR §§ 661.8 (prohibits the performance of any regulated activity in a tidal wetland without a permit) and 751.1(a) (prohibits the discharge of any pollutant to the waters of the State without a SPDES permit).

With respect to staff's contention that the respondents violated ECL § 17-0501(1) (unlawful to discharge into waters matter that will cause or contribute to a condition in contravention of water quality standards), there has not been any showing of facts. The staff has not submitted any proof to establish that the applicable standard was violated or even what that standard is with respect to the receiving body of water. Accordingly, I do not find a violation of ECL § 17-0501(1). See, Commissioner's Decision, Matter of Morgan Oil (October 17, 1994).

Up until 2003, ECL § 71-1929 provided for a maximum penalty of $25,000 per violation per day and injunctive relief. In 2003, the Legislature increased this sum to $37,500. Because these violations all occurred prior to 2003, the lower sum would apply.

ECL § 71-2503 provides that any person violating Article 25 or the regulations promulgated thereunder is subject to a civil penalty not to exceed ten thousand dollars per day for each violation.

The civil penalty policy of the Department sets forth a number of factors to guide the imposition of penalties including the gravity of the violation, the cooperation of the respondent, the respondent's compliance history and the economic benefit gained by non-compliance. The staff has documented well the history of respondents' recalcitrance to obeying the law and to cooperating with Department staff in resolving the violations. While staff has suggested a penalty of $30,000, I find that this penalty is insufficient to address respondents' actions.

Respondents' discharge of polluted wastewater into the streets and ultimately waters of the State in order to save themselves from having to pay a septic hauler is a grave offense. The potential impact of this polluted water on the receiving waters is serious. In addition, after the respondents were alerted to the illegality of their actions, they continued to discharge and attempted to do so when they thought their actions would not be noticed. It is precisely violations such as these that should be most seriously addressed due to the intent of the violators to ignore the law and their actions' impact on the environment.

Mr. Crisafulli revealed in his affirmation that $30,000 was the original sum staff proposed as the settlement in the consent order sent to the respondents on August 19, 1999.[2] Crisafulli Aff., ¶ 13. For reasons not revealed in staff's papers, staff later offered to settle the violations for a payable penalty of $15,000. Id., ¶ 31; Ex. T. After years of the public's resources being utilized to address these violations and the respondents' failure to cooperate, the penalty should be greater than either of these sums.

While the staff's motion requests a penalty of $30,000, the complaint is not so limited because it asks for "a civil penalty in an appropriate amount to be determined at hearing, but not to exceed the maximum amount authorized by law." Ex. S(b). Thus, the respondents were on notice that a much larger penalty could be assessed. As the staff's motion is adequately supported and the respondents have not replied to it, there is no requirement of a hearing to determine the penalty.

The Department must ensure that the actions of the respondents do not result in an economic benefit to them based upon their refusal to pay a septage hauler. Their actions disadvantage those business people who adhere to the environmental laws by paying their septage haulers. While staff has not provided specific information on the economic benefit gained by the respondents in not paying the septage haulers, the respondents themselves admitted to this benefit as the rationale for their actions. See, Fritz memo, Ex. B.

Staff has described in its motion papers the efforts it made

---

[2] In his affirmation, Mr. Crisafulli writes that the consent order was sent on August 19, 1998. But the copy of the letter and consent order submitted as Exhibit J indicate the year was 1999.

to work with the respondents to come to a resolution of this matter. Crisafulli Aff., ¶¶ 9-17, 21-22, 25-31, 34-39. Respondents took every advantage of the time that passed as staff attempted to cooperate. The Amabiles failed to attend pre-hearing conferences, adequately answer the complaints, return correspondence and phone calls, or return the consent order signed despite promises to do so. Id.

The staff has documented an illegal discharge from the respondents' facility into the waters and tidal wetlands of the State on nine occasions between July 24 and November 2, 1998. Exs. B and M. While the staff alleges five separate violations of Article 17 and Part 751 of 6 NYCRR, in essence, these causes of action all address the respondents' discharge of septage into the waters of the State without a SPDES permit. Staff also alleges that respondents did so in violation of water quality standards. However, as explained above, I did not find adequate proof to sustain this a finding of violation. To avoid the issue of multiplicitous pleadings in calculation of the penalty - because the discharge without a permit allegations all relate to the same illegal actions - these actions constitute one violation on nine occasions. See, Matter of Wilder, ALJ Hearing Report, at 9-11, adopted by Acting Commissioner's Supplemental Order, Sept. 27, 2005). That is, discharging without a permit on nine occasions. In addition, the respondents violated Article 25 and Part 661 by discharging without a permit into a tidal wetlands on nine occasions. Therefore, the maximum penalty for these violations is $315,000. Recognizing that this is a large sum to assess against what appears to be two small business owners, I recommend to the Commissioner that the penalty amount be $100,000.

CONCLUSION

I recommend that the staff's motion for order without hearing be granted in part and that the respondents be required to pay a penalty of $100,000. Because the respondents' facility is closed, there is no injunctive relief required.

Dated: Albany, New York
March 30, 2006

_____/s/_____
Helene G. Goldberger
Administrative Law Judge