STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law ("ECL") and Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), - by - **GOODWILL SPORTS ASSOCIATION, INC.**, **and PHYLLIS FITZPATRICK**, Respondents.	**ORDER** DEC Case No. R3-20040330-32

Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondents Goodwill Sports Association, Inc., and Phyllis Fitzpatrick by service of a complaint dated September 1, 2004.

In accordance with section 622.3(a)(3) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), respondents were personally served with a copy of the complaint on October 7, 2004, at respondent Fitzpatrick's residence at 53 Falmouth Road, Yonkers, New York.

The complaint alleged that respondents were involved in the placement of construction and demolition ("C&D") debris at two school sites in Westchester County without any Department authorization, and without meeting any regulatory exemption to do so. More particularly, respondents were charged with the disposal of the C&D debris, in violation of 6 NYCRR 360-1.5(a), as well as the unpermitted construction and operation of the solid waste management facilities into which the debris was disposed, in violation of 6 NYCRR 360-1.7(a)(1)(i). The charges of violation of 6 NYCRR 360-1.5(a) have subsequently been withdrawn, as has a request for remedial relief.

Respondents failed to file an answer to the complaint. Department staff filed a motion for a default judgment, dated November 26, 2004, with the Department's Office of Hearings and Mediation Services and the matter was assigned to Administrative Law Judge ("ALJ") Edward Buhrmaster. On December 30, 2004, ALJ Buhrmaster granted staff's request that the motion be held in abeyance pending the outcome of settlement negotiations. After settlement negotiations failed, staff requested a decision on its

motion on June 19, 2006. Following an exchange of correspondence with Department staff counsel, the ALJ prepared the attached summary report. I adopt the ALJ's report as my decision in this matter, subject to the following comments.

Based upon the record, I conclude that the civil penalty proposed by Department staff and the ALJ is appropriate. I note, however, that prior to May 15, 2003, the maximum penalty imposed under ECL 71-2703(1)(b)(ii) and (3) for the violations alleged in the complaint was $15,000 and $10,000 per day, respectively. Thus, the maximum daily penalty for violations that occurred prior to May 15, 2003 is $25,000 per day rather than the current maximum of $37,500 per day.

I find the proposed penalty appropriate given the gravity of the violations. Here, the complaint alleges that more than 200,000 cubic yards of solid waste were deposited on athletic fields at two schools. The large volume of solid waste involved, together with the reasons noted in the ALJ's report, support imposition of the proposed penalty amount.

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

I. Pursuant to 6 NYCRR 622.15, Department staff's motion for a default judgment is granted.

II. Respondents are adjudged to be in default and to have waived the right to a hearing in this enforcement proceeding. Accordingly, the remaining allegations against respondents, as contained in the complaint, are deemed to have been admitted by respondents.

III. Respondents are adjudged to have violated 6 NYCRR 360-1.7(a)(1)(i) by constructing and operating solid waste management facilities at two school sites in Westchester County, without permits from the Department.

IV. Respondents are hereby jointly and severally assessed a civil penalty in the amount of three hundred thousand dollars ($300,000). The civil penalty shall be due and payable within thirty (30) days after service of this order upon either respondent. 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: 21 South Putt

Corners Road, New Paltz, New York 12561-1696, ATTN: Division of Legal Affairs - Civil Penalty Coordinator.

V. All communications from respondents to the Department concerning this order shall be made to Regional Attorney Vincent Altieri, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York, 12561-1696.

VI. The provisions, terms and conditions of this order shall bind respondents Goodwill Sports Association, Inc., and Phyllis Fitzpatrick, and their agents, successors and assigns, in any and all capacities.

For the New York State Department of Environmental Conservation

By: /s/
Denise M. Sheehan
Commissioner

Dated: January 17, 2007
Albany, New York

TO: Phyllis Fitzpatrick
Goodwill Sports Association, Inc.
53 Falmouth Road
Yonkers, New York 10701

Goodwill Sports Association, Inc.
479 White Plains Road
Eastchester, New York 10709

Andrew Gottlieb, President
Peoples Management Resource, Inc.
21 North Plank Road
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Joyce E. Jiudice,
Associate Regional Attorney
NYS Department of Environmental Conservation
Division of Legal Affairs, Region 3
21 South Putt Corners Road
New Paltz, New York 12561

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Article 27 of the Environmental Conservation Law and Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, by:

GOODWILL SPORTS ASSOCIATION, INC., and **PHYLLIS FITZPATRICK**,

Respondents.

DEFAULT SUMMARY REPORT

Case No. R3-20040330-32

Proceedings

On October 7, 2004, Staff of the Department of Environmental Conservation personally served a notice of hearing and complaint, both dated September 1, 2004, upon Goodwill Sports Association, Inc., by delivering a copy of each to Phyllis Fitzpatrick, its executive director. The complaint alleged that the Respondents were involved in the placement of construction and demolition (C&D) debris for a fee at two school sites in Westchester County, without Department authorization and without meeting any regulatory exemption to do so. The notice advised the Respondents of their duty to serve an answer to the complaint within 20 days of receipt.

By written motion dated November 26, 2004, Department Staff moved for a default judgment against the Respondents. The motion was based on the Respondents' failure to a file an answer by October 27, 2004.

The motion papers were sent to James McClymonds, the Department's chief administrative law judge, who assigned the matter to me.

By letter of December 7, 2004, Andrew Gottlieb, president of Peoples Management Resource, Inc., in Newburgh, advised Department Staff that his company had been retained to assist the Respondents. Mr. Gottlieb wrote that he was requesting a continuance so that his company, a business consulting firm, could better prepare itself to respond to the complaint. Mr. Gottlieb said that Peoples Management Resource had many law firms that it planned to contact, and that it would assist in seeking funds for the Respondents, due to Ms. Fitzpatrick's alleged "lack of monetary funding." Mr. Gottlieb said that Ms. Fitzpatrick apologized for not responding in a timely manner and would be more diligent in this regard going forward.

Mr. Gottlieb's letter included a request to discuss the complaint further with Department Staff in hopes that the matter could be resolved "prior to administrative law decision." In response, Department Staff sent me a letter of December 23, 2004, requesting that I hold the default motion in abeyance while Staff opened discussions with Mr. Gottlieb. I granted this request by letter of December 30, 2004. I wrote that should Department Staff again seek a decision on its motion, it should notify me in writing, copying Mr. Gottlieb, and that Staff should likewise inform me in writing of any settlement with the Respondents. By copying my letter to Mr. Gottlieb, I also requested that Department Staff counsel and I be notified promptly should any attorney enter the case on behalf of one or both of the Respondents.

On June 19, 2006, Department Staff addressed a letter to me requesting that a decision be issued on Staff's motion for default judgment. Staff wrote that it had not reached a settlement with the Respondents, despite negotiations over a long period of time. Staff's letter was copied to Mr. Gottlieb and the Respondents, and was received by me on June 28, 2006.

Staff also copied me on a letter it had sent to Mr. Gottlieb and the Respondents on June 12, 2006, informing them that Staff would be writing me on June 19 for a decision on Staff's motion. Staff's June 12 letter, addressed to Mr. Gottlieb, explained the circumstances of the default, adding that the Respondents had not requested an opportunity to serve a late answer in the 20 months since October 27, 2004, when the answer was due.

Enclosed with Staff's June 12 letter to Mr. Gottlieb and the Respondents, but not provided to me, was a consent order which Staff indicated was its offer of settlement for the violations alleged in this matter. Staff's letter indicated that this consent order was first offered to the Respondents by letter to Mr. Gottlieb on March 17, 2006, with a request that the Respondents decide to accept or reject the settlement offer by April 7, 2006, a deadline that was later extended to April 21, 2006.

Staff's June 12 letter said that in subsequent discussions, Mr. Gottlieb and Ms. Fitzpatrick agreed to settle the matter with payment of a $20,000 civil penalty, and that Staff agreed to extend the time to sign the order to May 19, 2006, at Ms. Fitzpatrick's request due to illness in her family. The letter added that Staff then agreed to extend that deadline to June 5, 2006, again at Ms. Fitzpatrick's request, this time due to financial difficulties. Finally, Staff's letter said that after

leaving messages for Mr. Gottlieb and Ms. Fitzpatrick on June 6, 2006, Staff counsel had not received the signed order or check. Staff assumed that the Respondents no longer wished to settle the matter, because neither they nor Mr. Gottlieb returned Staff counsel's calls to explain or request additional time.

On August 29, 2006, I wrote a letter to Staff counsel, which was copied to the Respondents and Mr. Gottlieb, raising some concerns about Staff's charges and proposed relief. By letter dated September 5, 2006, Staff counsel responded. My concerns and Staff's response are discussed below.

I have received no communications from the Respondents or Mr. Gottlieb in response to Staff's request that the motion for default judgment be decided. The original Staff counsel in this matter was Jennifer David Hesse. In December 2004, after her departure from the Department, the matter was reassigned to Jonah Triebwasser, and, after his retirement, to Joyce E. Jiudice, associate Region 3 attorney, who has been handling the matter this year. No attorney has appeared on behalf of the Respondents while the default motion has been pending in this office.

Findings of Fact

1. At 11:45 a.m. on October 7, 2004, Department Environmental Conservation Officer ("ECO") Karen Ott personally served a notice of hearing and complaint in this matter by delivering a copy of each to Phyllis Fitzpatrick, executive director of Goodwill Sports Association, Inc., at 53 Falmouth Road, Yonkers, New York.

2. Among other things, the hearing notice advised the Respondents that within 20 days of receipt of the notice, the Respondents must serve a written answer to the complaint on the Department attorney, and that failure to timely serve an answer would result in a default and a waiver of the Respondents' right to a hearing.

3. The Respondents failed to file an answer to the complaint on or before October 27, 2004, the deadline for timely service, or subsequently.

Discussion

- - Satisfaction of Default Requirements

According to the Department's hearing regulations, a respondent's failure to file a timely answer constitutes a

default and a waiver of the respondent’s right to a hearing. [See Section 622.15(a) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”).] When such a failure occurs, Department Staff may move for a default judgment, such motion to 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 file a timely answer; and
(3) a proposed order. [See 6 NYCRR 622.15(b).]

Department Staff’s papers contain all three of these elements, and therefore its motion may be granted.

First, ECO Ott’s affidavit of personal service (attached as Exhibit “B” to Ms. Hesse’s affirmation in support of the motion for default judgment) adequately demonstrates that the notice of hearing and complaint were served upon both Respondents on October 7, 2004.

The Department’s enforcement hearing procedures provide that service of the notice of hearing and complaint must be by personal service consistent with the New York State Civil Practice Law and Rules (“CPLR”) or by certified mail. [See 6 NYCRR 622.3(a)(3).] CPLR 308(1) allows for personal service upon a natural person by delivering the summons within the state to the person to be served. CPLR 311(a)(1) allows for personal service upon a domestic corporation by delivering the summons to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service.

According to the Department’s complaint, Goodwill Sports Association, Inc. is a domestic not-for-profit corporation, and Ms. Fitzpatrick is its executive director and the person with primary control of its activities. Therefore, service of Ms. Fitzpatrick at what the complaint indicates is her residence was adequate both as to her personally and as to the corporation she controls. ECO Ott asserts that the person to whom a copy of the notice of hearing and complaint was delivered was Ms. Fitzpatrick, and the ECO’s affidavit contains a description of the person served.

After receiving the notice of hearing and complaint on October 7, 2004, Goodwill Sports Association and Ms. Fitzpatrick had 20 days to serve an answer on Department Staff. According to

Ms. Hesse's supporting affirmation, dated November 26, 2004, no answer was filed by October 27, 2004, and there was no request to serve a late answer. Ms. Hesse's affirmation meets the second requirement of the regulations - - that Staff prove that the Respondents failed to file a timely answer. No request to file a late answer had been received by June 19, 2006, according to Ms. Jiudice's letter of that date, nor have I received such a request in the time that this matter has been assigned to me.

Staff provided a proposed order with its motion for default judgment, satisfying the third requirement of the regulations. Because of changed circumstances since the motion was made, as discussed below, certain portions of the relief requested in that order have subsequently been withdrawn.

- - Causes of Action

The complaint in this matter charged the Respondents with violations of law arising from the construction of athletic fields at two schools in Westchester County: the Woodlands High School at 475 West Hartsdale Avenue, Village of Hartsdale, Town of Greenburgh, and the Academy of Our Lady of Good Counsel High School at 52 North Broadway, White Plains. At each site, it is alleged, the Respondents were involved in the placement of construction and demolition (C&D) debris without any Department authorization, and without meeting any regulatory exemption to do so. More particularly, the Respondents were charged with both the disposal of the C&D debris, in violation of 6 NYCRR 360-1.5(a), as well as the unpermitted construction and operation of the solid waste management facilities into which the debris was disposed, in violation of 6 NYCRR 360-1.7(a)(1)(i). However, it appeared from the complaint that the Respondents did not do the actual waste disposal; this was done by haulers who paid the Respondents a fee for that purpose.

I raised this point in a letter to Ms. Jiudice on August 29, 2006, indicating I was concerned whether the Respondents could be charged with violating Section 360-1.5(a) when, in fact, they did not do the actual disposal, but instead were charged with receiving the debris, accepting payment for its disposal, and directing and managing the placement of the debris. I wrote that I would appreciate some further explanation of Staff's theory of liability for the waste disposal charges, and whether, for liability and penalty assessment purposes, the disposal charges should be treated separately from the charges for unpermitted construction and operation of the solid waste management facilities.

In her letter of September 5, 2006, Ms. Jiudice responded by withdrawing the charges of violation of 6 NYCRR 360-1.5(a) from both the complaint and the proposed order. Therefore, the only remaining charges concern violation of 6 NYCRR 360-1.7(a)(1)(i), for construction and operation of the solid waste management facilities in the absence of Department permits.

- - Time Frames of Alleged Violations

In its complaint, Department Staff alleges that the violation of Section 360-1.7(a)(1) occurred "from the fall of 2002 until January 20, 2003" in relation to the Woodlands High School site (see second cause of action, paragraph 32), and "in the Spring of 2003" in relation to the Good Counsel site (see fourth cause of action, paragraph 48). In my August 29, 2006, letter, I questioned Staff about the time frame for the Good Counsel High School violation, noting that the affidavit of Andrew D. Lent (Exhibit "D" to the default motion, in support of Staff's requested civil penalty) references the complaint as stating that this violation occurred in the spring of 2004.

In her letter of September 5, 2006, Ms. Jiudice responded that the reference to spring of 2004 was a typographical error, and that the appropriate time frame for the Good Counsel High School violation was the spring of 2003, as charged in the complaint.

As part of the motion for default judgment, Mr. Lent, of the Department's Division of Solid & Hazardous Materials, performed a calculation to determine the statutory maximum penalty that could be assessed in this matter, based on violation time frames alleged in the complaint. For the purpose of his calculation, Mr. Lent assumed that violations at the Woodlands High School site occurred over "at least 100 days" from the fall of 2002 to January 20, 2003, and he assumed that violations at the Good Counsel High School site occurred on "at least 35 days" in the spring of 2004 (actually, spring of 2003, after correction of his typographical error). In my August 29, 2006, letter, I inquired as to the bases for these assumptions, particularly as Staff acknowledged not having witnessed the waste disposal. Also, as to the Good Counsel site, I inquired why Mr. Lent assumed at least 35 days of violations when paragraph 14 of the complaint states that the disposal of 275 truck loads (or 11,000 cubic yards) that is the source of these violations occurred "during a two-day period."

In her letter of September 5, 2006, Ms. Jiudice responded that, for the Good Counsel High School site, Staff was seeking a

penalty only with regard to the two days asserted in paragraph 14 of the complaint, and withdrew the allegation of at least 35 days of violation in the Lent affidavit. For the Woodlands High School site, Ms. Jiudice wrote that Staff was seeking a penalty for 100 days of violations, noting that the 100 days is an estimate of the period that the illegal activity occurred (in other words, a little less than three months in the fall of 2002 plus 20 days in January 2003).

- - Proposed Relief

The complaint and the proposed order attached to Staff's default motion both request an assessed civil penalty in the amount of $300,000. In addition, they request the establishment of a compliance schedule under which the Respondents would (1) establish a $700,000 escrow account to cover the costs of investigative and remedial work to be performed at either or both sites, (2) list for the Department all locations at which the Respondents placed, dumped, or disposed of fill material, including but not limited to C&D debris, in New York State for the five years preceding the complaint's issuance, including the exact location of the source of the materials and a description of the amount and nature of the materials; and (3) if required by the Department, provide funding for sampling of specified sites on the above-reference list in accordance with a Department-approved sampling plan.

After renewing its motion for default judgment, Department Staff indicated that, since this action began, the property owners themselves had remediated the two sites at which the C&D debris was disposed. Because of this, Staff agreed with me that the requirement that the Respondents establish an escrow account to cover the costs of investigative and remedial work at these sites - - the first element of its proposed compliance schedule - - was no longer appropriate. In her letter of September 5, 2006, Ms. Jiudice confirmed that Staff was withdrawing this aspect of its requested relief.

In my August 29, 2006, letter, I questioned Staff as to the second and third elements of its proposed compliance schedule: the production of a list of other disposal sites, and the possible funding of sampling costs at these sites. I asked Staff for whatever legal support it could provide for these measures as they were not geared to remediation of the sites referenced in the complaint, and it was not clear how such relief could be ordered in the context of this matter, particularly in the absence of findings that the Respondents had committed violations at other sites.

In her letter of September 5, 2006, Ms. Jiudice did not respond to my questions but did withdraw these elements of its proposed compliance schedule as well.

With the total withdrawal of the compliance schedule Staff initially proposed, the only remaining relief requested in this matter is the $300,000 civil penalty that Staff wants assessed against the Respondents. Even with the withdrawal of the disposal charges, such a penalty is fully supported by the charges of construction and operation of solid waste management facilities at the two sites referenced in the complaint. As a consequence of their default, the Respondents are deemed to have admitted these charges, and are therefore subject to penalties under the Environmental Conservation Law ("ECL").

ECL 71-2703(1)(b)(ii) provides that any person who violates any of the provisions of Title 7 of ECL Article 27, which pertains to solid waste management facilities, or any rule or regulation promulgated pursuant thereto, and thereby causes the release of more than 10 cubic yards of solid waste into the environment, shall be liable for a civil penalty not to exceed $22,500 for each such violation and an additional penalty of not more than $22,500 for each day during which such violation continues. Also, ECL 71-2703(3) provides that where such violations occur with regard to the construction and operation of facilities for the disposal of C&D debris, an additional penalty of $15,000 is warranted, with each day of deposition constituting a separate violation.

Construction and operation of a solid waste management facility without a DEC permit is a violation of the Department's Part 360 regulations, which were promulgated pursuant to ECL Article 27, Title 7 - - more particularly, a violation of 6 NYCRR 360-1.7(a)(1)(i). As such, for each of the remaining violations in this matter, a $37,500 per day penalty is warranted, because the Respondents were managing C&D debris. Department Staff has not explained how it calculated the violation time frames that are referenced in its complaint. However, because the Respondents defaulted, no explanation is necessary. An explanation would have been expected at a hearing on the charges, but the Respondents have waived their right to a hearing. By failing to answer the complaint, the Respondents are deemed to have admitted the violations for the periods charged by the Department - - 100 days for the Woodlands High School site and 2 days for the Good Counsel High School site. As noted in Ms. Jiudice's September 5, 2006, letter, the statutory maximum penalty in this matter is $3,825,000, calculated as $37,500 per day multiplied by 102 days of violations.

Department Staff’s recommended penalty is less than the statutory maximum penalty and also less than what Staff estimates to be the economic benefit that accrued to the Respondents because of their violations. In my August 29, 2006, letter, I asked Staff for whatever information it had to demonstrate this benefit, as the Commissioner’s penalty policy intends that a violator be put in a worse position than those who have complied with the law voluntarily and in a timely fashion.

According to the complaint, 200,000 cubic yards of C&D debris were disposed at the Woodlands High School site, and another 11,000 cubic yards of C&D debris were disposed at the Good Counsel High School site. To calculate economic benefit, Staff assumes that the Respondents were paid $45 per cubic yard by haulers bringing waste to the site, that figure being Staff’s estimate of the average waste disposal cost in Region 3 of the Department. Assuming that rate was paid, the Respondents would have received $9 million in dumping fees, a benefit only a small portion of which would be extracted by a $300,000 penalty.

Of course, what the Respondents actually earned by their illegal activities is hard to determine in the absence of payment records, which the Department has not produced. Even so, Staff’s estimate appears somewhat inflated, because it is presumably based on the cost of waste disposal at permitted facilities, whereas these sites were not permitted and operated illegally. For a hauler to use such a site, there may have been an inducement - - such as a reduced dumping fee - - in which case the economic benefit would be less than what Staff calculates.

At any rate, the $300,000 penalty requested by Staff is well below the statutory maximum that would be warranted based on a reading of the complaint, and is certainly warranted based on the nature of the violations. From what can be determined from the complaint, the Respondents arranged with the two schools to bring fill onto their properties to construct or upgrade athletic fields, which led to the schools being used as unpermitted dump sites for C&D debris. The Respondents portrayed their projects as gifts to the schools, when in fact the projects made money for the Respondents. For instance, as to the Woodlands High School site, the complaint alleges that the Respondents contracted with the school district to improve its athletic fields, while subcontracting the delivery of fill to three haulers who paid the Respondents an unspecified fee for site access. (One of these haulers, Dirtman Enterprises, Inc., has been charged with unlawful waste disposal in a separate enforcement action that remains unresolved.)

The schools were told that the Respondents would be providing them with synthetic, multi-purpose turf playing surfaces, when in fact the materials dumped at one or both of the sites included wood, fragments of slag, coal, glass, gypsum, rug fragment, and metal other than concrete reinforcement bars. According to the complaint, the types of materials found at the sites belonged in a permitted C&D debris landfill, such landfills being regulated under 6 NYCRR Subpart 360-7.

Because the Respondents operated without Department permits, they were able to avoid Department scrutiny while the illegal disposal occurred. The permit application process is a point of control for the Department, and it assures that activities with the potential for adverse impact on the environment are conducted safely, in accordance with regulatory standards. Staff's complaint does not allege any actual harm to public health or the environment as a result of the illegal dumping. However, given the nature of the materials that were dumped, and the intended use of the materials as athletic field surfacing, the risk of such harm is apparent. Also, the Department most certainly would not have approved the Respondents' activities had they sought permission by way of permit applications for the two school projects.

Had the Respondents cooperated in resolving this matter and acted responsibly to correct for their violations, this could be recognized in terms of the amount of an assessed penalty. However, the Respondents appear to have put Staff through extended discussions, at the end of which they did not sign the agreement they had negotiated and stopped returning Staff counsel's phone calls. According to Staff counsel, the school sites were remediated by the property owners, at their cost, without the Respondents' involvement.

The Respondents' claims, made to Staff, of financial problems to explain their lack of counsel and failure to pay the negotiated civil penalty are not supported by evidence, and therefore do not warrant a downward penalty adjustment.

One could argue that, based on the facts of this matter, a penalty higher than that requested by Staff would be more appropriate in this matter. However, it would be difficult, on the record before me, to determine what that penalty should be, especially given the uncertainty as to how much economic benefit the Respondents gained from their violations.

Rather than attempt to develop the record further, and given the age of the violations, which would complicate such an effort,

I recommend that the penalty proposed by Staff in its complaint be assessed without further delay.

Conclusion

The Respondents have defaulted on their obligation to answer the complaint in this matter. As a result, they have waived their right to a hearing.

The $300,000 civil penalty requested by Staff is warranted and sufficiently supported by the facts and circumstances alleged in the complaint.

Recommendation

I recommend that the Commissioner sign an order assessing the $300,000 penalty against the Respondents jointly and severally.

/s/

Edward Buhrmaster
Administrative Law Judge

Albany, New York
October 13, 2006