

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

In the Matter of the Alleged Violations
of Article 19 of the New York State
Environmental Conservation Law ("ECL")
and Part 230 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York
("NYCRR"),

ORDER

DEC Case No.
D2-1003-02-09

- by -

POLANAYA CORP. ,

Respondent.

Staff of the Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Polanaya Corp. by service of a notice of hearing and complaint dated June 3, 2004.

Personal service of the notice of hearing and complaint upon respondent corporation was effected pursuant to Business Corporation Law § 306(b), by hand-delivery on June 3, 2004, of the notice of hearing and complaint to the Secretary of State (see section 311[a][1] of the Civil Practice Law and Rules ["CPLR"]; 6 NYCRR 622.3[a][3]). Also on June 3, 2004, staff effected additional service of the notice of hearing and complaint pursuant to CPLR 3215(g)(4), by sending the complaint by first class mail to respondent at respondent's last known address. Accordingly, Department staff satisfied the notice requirements for a default judgment (see Matter of Makhan Singh, Decision and Order of the Commissioner, March 19, 2004, at 2).

The June 3, 2004 complaint alleged that respondent is the owner or operator of a gasoline dispensing site located at 176 McGuinness Blvd., Brooklyn, NY 11222, that is subject to stage II vapor collection and control system requirements. The complaint referenced an inspection of the facility by Department staff that revealed that a faceplate on pump #4 was torn more than 25 percent. The consequences of such a torn faceplate would be to render the vapor recovery system highly ineffective and allow gasoline vapor to be released into the atmosphere above legal limits.

The complaint alleged that respondent:

1. violated ECL article 19 and 6 NYCRR 230.2(f)(4) by failing to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed;
2. violated ECL article 19 and 6 NYCRR 230.2(g)(2) by failing to remove from service, lock and seal dispensers with defective stage II components to prevent vapor loss; and
3. violated ECL article 19 and 6 NYCRR 230.2(k)(1) by failing to perform a dynamic back pressure test, liquid blockage test, and leak test before commencing operation or at five year intervals after commencing operation.

Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the complaint expired on June 23, 2004. To date, respondent has failed to serve an answer.

The notice of hearing and complaint also directed respondent to appear for a pre-hearing conference on July 8, 2004 at 11:00 A.M. at the Department's Region 2 Office, One Hunter's Point Plaza, 47-40 21st Street, Long Island City, New York. Respondent failed to appear.

Department staff filed a motion for default judgment dated July 27, 2004 with the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") P. Nicholas Garlick, who prepared the attached default summary report. I adopt the ALJ's report as my decision in this matter, subject to my comments herein.

Based on the record, I conclude that the proposed civil penalty and the measures recommended to address the violations are appropriate.

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 default judgment is granted.
- II. Respondent is adjudged to be in default and to have waived its right to a hearing in this enforcement proceeding. Accordingly, Department staff's allegations against respondent in the complaint are deemed to have been admitted by respondent.

III. Respondent is found to be the owner or operator of a gasoline dispensing site located at 176 McGuinness Blvd., Brooklyn, NY 11222. Respondent is adjudged to have:

1. failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed in violation of 6 NYCRR 230.2(f) (4);

2. failed to remove from service, lock and seal dispensers with defective stage II components to prevent vapor loss in violation of 6 NYCRR 230.2(g) (2); and

3. failed to perform a dynamic back pressure test, liquid blockage test, and leak test either before commencing operation or at five year intervals after commencing operation in violation of 6 NYCRR 230.2(k) (1).

IV. Respondent is assessed a civil penalty in the amount of three thousand three hundred dollars (\$3,300.00), which is due and payable no later than thirty (30) days after service of this order upon respondent. Such 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 delivered to the Department at the following address: New York State Department of Environmental Conservation, Legal Affairs, 14th floor, Attn: Anthony A. London, Esq., 625 Broadway, Albany, New York 12233-5500.

V. Respondent shall:

A. immediately remove from service, lock and seal all dispensers with defective stage II components to prevent vapor loss until approved replacement parts are installed;

B. repair such defective stage II components within 30 days of service of this order;

C. submit proof of such repairs to the Department by certified mail before recommencing operation of the subject dispensers to New York State Department of Environmental Conservation, Legal Affairs, 14th floor, Attn: Anthony A. London, Esq., 625 Broadway, Albany, New York 12233-5500; and

D. perform a dynamic back pressure test, liquid blockage test and leak test of its stage II systems and submit a notarized copy of the test results by certified mail to the Department at: New York State Department of Environmental Conservation, Legal

Affairs, 14th floor, Attn: Anthony A. London, Esq., 625 Broadway, Albany, New York 12233-5500.

VI. All communications from respondent to the Department concerning this order shall be made to Anthony A. London, Esq., Associate Attorney, New York State Department of Environmental Conservation, 625 Broadway, 14th floor, Albany, New York 12233-5500.

VII. The provisions, terms and conditions of this order shall bind respondent Polanaya Corp., and its successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: Denise M. Sheehan
Acting Commissioner

Dated: Albany, New York
April 12, 2005

To: (Via Certified Mail)
Polanaya Corp.
176 McGuinness Blvd.
Brooklyn, NY 11222

(Via Regular Mail)
Anthony A. London, Esq.
Associate Attorney
NYS Department of Environmental Conservation
625 Broadway
Albany, N.Y. 12233-5500

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations
of Article 19 of the Environmental
Conservation Law of the State of New
York and Part 230 of Title 6 of the
Official Compilation of Codes, Rules and
Regulations of the State of New York
("NYCRR"), by:

Default Summary
Report

POLANAYA CORP.,

DEC Case No.
D2-1003-02-09

Respondent.

PROCEEDINGS

By notice of motion dated July 27, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against Polanaya Corp. ("respondent") concerning alleged violations of Article 19 of the Environmental Conservation Law ("ECL") and Part 230 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

In its complaint dated June 3, 2004, DEC alleged three causes of action at respondent's gasoline dispensing site located at 176 McGuinness Blvd., Brooklyn, NY 11222, specifically, that respondent: (1) failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed in violation of 6 NYCRR 230.2(f)(4); (2) failed to remove from service, lock and seal dispensers with defective stage II components to prevent vapor loss in violation of 6 NYCRR 230.2(g)(2); and (3) failed to perform a dynamic back pressure test, liquid blockage test, and leak test either before commencing operation or at five year intervals after commencing operation in violation of 6 NYCRR 230.2(k)(1). In support of its motion, DEC submitted an affirmation of Anthony A. London, Esq., a proposed order and proof of personal service of the notice of hearing and complaint on the New York State Department of State with additional mail service of the notice of hearing and complaint upon respondent pursuant to CPLR 3215(g)(4).

As of the date of the motion, respondent has failed to

appear and serve an answer or otherwise move, although the time to do so expired on or about June 23, 2004. Further, DEC submitted proof that the notice of hearing and complaint in this matter directed respondent to appear for a pre-hearing conference on July 8, 2004 at 11:00 a.m. at DEC's Region 2 Office, One Hunter's Point Plaza, 47-40 21st Street, Long Island City, New York. The affirmation of attorney London indicates that respondent failed to appear at said conference and did not obtain, nor request an adjournment of the conference.

DEFAULT PROCEDURES

Section 622.15 of 6 NYCRR, "Default Procedures," provides, in pertinent part: "(b) The motion for a default judgment ... must 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 appear or failure to file a timely answer; and (3) a proposed order."

The following Findings are based upon the papers submitted, as identified above.

FINDINGS

1. On June 3, 2004 DEC Staff served a notice of hearing and complaint on respondent Polanaya Corp. The time to answer or otherwise move expired on June 23, 2004. No answer has been served to date.
2. The notice of hearing and complaint served on June 3, 2004 directed respondent to appear for a pre-hearing conference on July 8, 2004. Respondent did not appear at the conference.
3. Respondent: (1) failed to ensure the proper operation of its stage II vapor collection and control system whenever gasoline was being loaded, unloaded or dispensed in violation of 6 NYCRR 230.2(f)(4); (2) failed to remove from service, lock and seal dispensers with defective stage II components to prevent vapor loss in violation of 6 NYCRR 230.2(g)(2); and (3) failed to perform a dynamic back pressure test, liquid blockage test, and leak test either before commencing operation or at five year intervals after commencing operation in violation of 6 NYCRR 230.2(k)(1). These violations occurred at respondent's gasoline dispensing site located at 176 McGuinness Blvd., Brooklyn, NY 11222.
4. The requirements for a default judgment have been

adequately met as prescribed by 6 NYCRR 622.15(b).

CONCLUSION

The motion for default judgment should be granted.

DATED: April 7, 2005
Albany, New York

By: _____/s/_____
P. Nicholas Garlick
Administrative Law Judge

To: Anthony A. London, Esq.
Associate Attorney
NYS Department of Environmental Conservation
625 Broadway
Albany, N.Y. 12233-5500

Polanaya Corp.
176 McGuinness Blvd
Brooklyn, NY 11222