

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of the Alleged Violation of Article 17 of the  
New York State Environmental Conservation Law (ECL)  
and Part 750 of Title 6 of the Official Compilation of Codes,  
Rules and Regulations of the State of New York (6 NYCRR)

-by-  
**R&M GALLO AUTO LLC,**  
  
Respondent.

---

**ORDER**

**DEC Case No.**  
**CO 8-20220711-46**

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent R&M Gallo Auto LLC (respondent) violated 6 NYCRR 750-2.5(a)(1) and 750-2.1(e) and State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004) (MSGP) by failing to file an acceptable annual certification report (ACR) by January 28, 2022 for calendar year 2021 for respondent's facility located at 2069 Drake Road, Brockport, Monroe County, New York (facility). Department staff, in its complaint, seeks an order of the Commissioner:

- (1) finding that respondent committed the violation alleged in the complaint;
- (2) directing that respondent submit the missing ACR;
- (3) assessing a civil penalty in the amount of two thousand six hundred dollars (\$2,600);  
and
- (4) granting such other relief as the Commissioner may deem appropriate.

Respondent R&M Gallo Auto LLC failed to file an answer in this matter and failed to appear for the adjudicatory hearing scheduled for April 12, 2023. At the April 12, 2023 adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Molly T. McBride, who presided at the hearing, reserved on the motion, and Department staff later submitted a written motion for default judgment dated July 17, 2023, with supporting papers. Administrative Law Judge (ALJ) Jennifer M. Ukeritis of the Department's Office of Hearings and Mediation Services was assigned to this matter and prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

Based upon respondent's failure to answer or appear in this matter, ALJ Ukeritis recommends that Department staff's motion for a default judgment be granted (see Default Summary Report at 4-6). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent

R&M Gallo Auto LLC failed to timely file an acceptable annual certification report for the calendar year 2021 and is in violation of 6 NYCRR 750-2.5(a)(1) and 750-2.1(e) and the MSGP.

Department staff correctly points out that the timely submission of complete and accurate annual certification reports is essential to the Department's mission, as it is the primary mechanism for reporting compliance with the MSGP conditions and allows the Department to determine compliance with the MSGP, identify unpermitted discharges, and evaluate potential environmental and other harms (see Affidavit of Ryan Waldron in Support of Motion for Default Judgment, sworn to June 12, 2023, ¶ 11).

Department staff, in its papers, seeks a penalty of two thousand six hundred dollars (\$2,600), and ALJ Ukeritis recommended that respondent R&M Gallo Auto LLC be directed to pay this amount. ECL 71-1929(1) authorizes a civil penalty of up to \$37,500 per day per violation for the violation at issue in this proceeding. In calculating the penalty request in this matter, Department staff considered the maximum statutory penalty, the Department's Civil Penalty Policy (DEE-1), dated June 20, 1990, and the Division of Water Technical and Operational Guidance Series (TOGS) 1.4.2 (Compliance and Enforcement of SPDES Permits [June 24, 2010]). Staff determined that the base penalty, for settlement purposes, would be \$1,000 for the violation (see Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq., dated July 17, 2023 [Haas Affirmation], ¶¶ 11-15; see also TOGS 1.4.2, Appendix C, Table H). Staff then adjusted the penalty, pursuant to Department guidance, to \$1,300 to account for inflation (see Haas Affirmation ¶ 15; see also Motion for Default Judgment, Exhibit E) and doubled the amount due to the fact that this matter was adjudicated and not settled (see Haas Affirmation ¶ 16). I find that staff provided adequate support for the requested penalty.

Based on the record before me, I find that the recommended penalty is authorized and appropriate. I direct that respondent submit the civil penalty of two thousand six hundred dollars (\$2,600) to the Department within thirty (30) days of the service of this order upon respondent. In addition, within thirty (30) days of the service of this order upon respondent, respondent R&M Gallo Auto LLC is directed to submit a complete and accurate annual certification report for calendar year 2021 to the Department.

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

- I. Department staff's motion for a default judgment against respondent R&M Gallo Auto LLC pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent R&M Gallo Auto LLC waived its right to be heard at the hearing.

- II. Based on the pleadings and papers submitted with and in support of Department staff's motion, respondent R&M Gallo Auto LLC is determined to have violated 6 NYCRR 750-2.5(a)(1) and 750-2.1(e) and the MSGP by failing to file an acceptable annual certification report by January 28, 2022 for calendar year 2021.
- III. Within thirty (30) days of the service of this order upon respondent R&M Gallo Auto LLC, respondent shall submit to the Department a complete and accurate annual certification report for calendar year 2021.
- IV. Respondent R&M Gallo Auto LLC is hereby assessed a civil penalty in the amount of two thousand six hundred dollars (\$2,600), to be paid within thirty (30) days of the service of this order upon respondent. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation at the address noted in paragraph V of this order.
- V. The annual certification report and civil penalty payment shall be sent to the following address:

Anne Haas, Esq.  
NYS Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14th Floor  
Albany, New York 12233-1500.
- VI. Any questions or other correspondence regarding this order shall also be addressed to Anne Haas, Esq. at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent R&M Gallo Auto LLC and respondent's agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By: \_\_\_\_\_

Basil Seggos  
Commissioner

Dated: September 25, 2023  
Albany, New York

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 and Part 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York

**DEFAULT SUMMARY  
REPORT**

-by-

**DEC Case No.  
CO 8-20220711-46**

**R&M GALLO AUTO LLC,**

Respondent.

---

Appearance of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Anne Haas, Associate Attorney, of counsel) for staff of the Department of Environmental Conservation
- No appearance for the Respondent

**Procedural History**

Staff of the New York State Department of Environmental Conservation (Department) served R&M Gallo Auto LLC (respondent) with a notice of hearing and complaint dated January 26, 2023 (complaint), alleging a violation of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) 750-2.5(a)(1) and 750-2.1(e) and State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004) (MSGP), for failure to file a timely annual certification report (ACR) for calendar year 2021 for respondent's facility located at 2069 Drake Road, Brockport, County of Monroe, New York (facility).

The complaint seeks an order of the Commissioner:

- finding that respondent committed the alleged violation;
- directing respondent to submit an acceptable ACR for calendar year 2021 to the Department;
- assessing a civil penalty in the amount of \$2,600; and
- for such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing, complaint, statement of readiness, order on consent, and invoice (Department papers) was made by certified mail, return receipt requested, and it was received by respondent on January 30, 2023. (*See* Affirmation of Anne Haas [Haas Affirm.], dated July 17, 2023, ¶ 2, and Motion for Default Judgment Exhibit C.)

Respondent failed to answer the complaint as directed in the notice of hearing. (*See Haas Affirm.* ¶¶ 2, 3.) As stated in staff’s notice of hearing, a virtual adjudicatory hearing was convened before Administrative Law Judge (ALJ) Molly McBride on April 12, 2023. (*See Haas Affirm.* ¶¶ 2, 4, and Exhibit B.) Department Staff was represented by Anne Haas, Esq., Office of General Counsel, New York State Department of Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of the respondent. (*See Haas Affirm.* ¶ 4.)

ALJ McBride noted for the record that respondent had failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ McBride reserved on the oral motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated July 17, 2023, staff submitted a written motion for a default judgment with supporting papers (*See Appendix A*, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by first class mail on or about July 17, 2023 (*See affidavit of service of Melissa Evans*, sworn to July 17, 2023). The matter was then reassigned to me. Respondent did not respond to the motion.

### **Applicable Regulatory Provisions**

Section 750-1.2(a)(65) defines “permittee” as “the holder of a SPDES permit.”

Section 750-2.1(e) of 6 NYCRR states that “[t]he permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.”

Section 750-2.5(a)(1) of 6 NYCRR, states that “[t]he permittee shall comply with all recording, reporting, monitoring and sampling requirements specified in the permit.”

MSGP GP-0-17-004 Part VI(A)(1)(b) states “[t]he ACR is the primary mechanism for reporting compliance with permit conditions to the Department. Every facility covered by this general permit must complete and submit an ACR form in accordance with the deadlines below: (1) Owners or operators must complete and submit an ACR covering January 1 to December 31. This ACR must be received by the Department on an annual basis by January 28 of the following calendar year ...” After December 21, 2020, all ACRs must be submitted electronically. (*See MSGP GP-0-17-004 Part VI(A)(1)(a)(2).*)

### **Findings of Fact**

1. Ryan Waldron is the Chief of the Compliance Assurance Section of the Bureau of Water Compliance in the Division of Water at the Department. (*See Affidavit of Ryan Waldron*, sworn to June 12, 2023, [Waldron Aff.] ¶ 1.)

2. Mr. Waldron’s duties include administering the provisions of Article 17 of the Environmental Conservation Law (ECL) and 6 NYCRR part 750, governing New York State Pollutant Discharge Elimination System (SPDES) permits. (*See* Waldron Aff. ¶ 2.)
3. Mr. Waldron has access to and is the custodian of the Department’s records related to the operation of SPDES-permitted facilities, including ACRs. (*See* Waldron Aff. ¶ 3.)
4. Respondent is a currently active domestic limited liability company within the state of New York with a service of process address listed with the Department of State’s Division of Corporations as 2069 Drake Road, Brockport, New York. (*See* Haas Affirm. ¶ 5, Exhibit D.)
5. Respondent is the owner/operator of Gallo’s Performance Auto Parts located at 2069 Drake Road, Brockport, New York, which discharges stormwater associated with an industrial activity. (*See* Haas Affirm. ¶ 5; Waldron Aff. Exhibit 1.)
6. Respondent filed a Notice of Intent dated August 5, 2019, to be covered by the SPDES MSGP.<sup>1</sup> (*See* Haas Affirm. ¶ 6; Waldron Aff. ¶ 5, Exhibit 1.)
7. Coverage for respondent was effective as of September 4, 2019, and respondent was assigned SPDES Permit ID No. NYR00G297. (*See* Haas Affirm. ¶ 6; Waldron Aff. ¶ 5.)
8. Respondent’s facility is covered under Sector M, “Automobile Salvage Yards” of the MSGP. (*See* Waldron Aff. Exhibit 1 and MSGP GP-0-17-004 Sector M.)
9. Respondent was covered by the MSGP for all of calendar year 2021. (*See* Haas Affirm. ¶ 7; Waldron Aff. ¶ 5.)
10. Pursuant to the MSGP, respondent was required to submit an annual certification report for calendar year 2021 to the Department by January 28, 2022. (*See* Haas Affirm. ¶ 7; Waldron Aff. ¶ 6.)
11. Respondent has not filed an ACR for the calendar year 2021. (*See* Haas Affirm. ¶ 8; Waldron Aff. ¶ 10.)
12. Respondent has not filed a Notice of Intent for the new GP-0-23-001 MSGP for Stormwater Discharges associated with Industrial Activity that became effective March 8, 2023. (*See* Waldron Aff. ¶ 4 fn 1.)
13. After respondent failed to timely file an ACR for 2021, Department staff mailed a notice of violation dated April 25, 2022, to respondent reminding respondent to submit the ACR. (*See* Waldron Aff. ¶ 8 Exhibit 2.)

---

<sup>1</sup> Permit No. GP-0-17-004 expired on February 28, 2023, and was replaced by GP-0-23-001, effective March 8, 2023. Respondent was covered by GP-0-17-004 during the entire 2021 calendar year and at the time of the violation that is the subject of this motion. (*See* Haas Affirm. ¶ 6 fn 1.)

14. Respondent did not respond to staff's notice of violation for failure to file an ACR and did not submit an ACR for 2021. (*See* Waldron Aff. ¶ 8.)
15. Department staff again attempted to settle the matter and bring respondent into compliance by mailing a cover letter and order on consent dated August 9, 2022, which gave respondent until September 16, 2022 to respond. (*See* Waldron Aff. ¶ 9.)
16. Respondent has not responded nor filed an ACR for 2021. (*See* Waldron Aff. ¶ 10.)
17. Service of the cover letter, notice of hearing, complaint, and statement of readiness dated January 26, 2023, was made by certified mail and was received by respondent on January 30, 2023. (*See* Exhibit C.)
18. A notice of hearing dated January 26, 2023, providing instructions for attending the virtual hearing on April 12, 2023, was served on respondent by certified mail, return receipt requested with the complaint. (*See* Exhibit B.)
19. Respondent failed to file an answer to the complaint and failed to appear at the adjudicatory hearing scheduled in the matter on April 12, 2023, as directed in the notice of hearing. (*See* Hearing Record.)

### **Discussion**

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see* 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, and failure to attend constitutes a default and a waiver of the opportunity for a hearing (*See* 6 NYCRR 622.8[c]; *see also* 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain:

- “(1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
- (2) proof of respondent's failure to appear or failure to file a timely answer;
- (3) consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
- (4) a concise statement of the relief requested;
- (5) a statement of authority and support for any penalty or relief requested; and

(6) proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable.” (6 NYCRR 622.15[b][1] - [6]).

As the Commissioner has held, “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim[s]” alleged in the complaint. (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*See Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018, at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and respondent failed to appear for the adjudicatory hearing scheduled on April 12, 2023, as directed in the notice of hearing; (iii) Department staff’s papers provide proof of the facts sufficient to support the violation alleged and enable me to determine that staff has a viable claim; (iv) Department staff’s papers include a concise statement of the relief requested (*see* motion for default judgment, wherefore clause; Haas Affirm. Exhibit B [complaint]); (v) staff’s motion includes a statement of authority and support for the penalty and relief requested (*see* Haas Affirm. ¶¶ 10-16, Waldron Aff. ¶ 11); and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of motion for default of Melissa Evans, sworn to July 17, 2023). Respondent did not file or serve a response to staff’s motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff’s submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to timely file a complete and accurate ACR for the calendar year of 2021 for respondent’s facility, in violation of 6 NYCRR 750-2.1(e), 750-2.5(a)(1) and the MSGP.

Staff’s complaint requested a total civil penalty of two thousand six hundred dollars (\$2,600). Staff’s submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department’s Civil Penalty Policy, DEE-1. (*See* Haas Affirm. ¶¶ 10-16). According to Department staff, timely submission of an ACR is essential to the Department’s mission, as it is a summary of all monitoring, inspections, and corrective actions taken by the permitted facility for the relevant calendar year. (*See* Waldron Aff. ¶11.) The ACR is the primary mechanism for reporting compliance with the MSGP conditions and allows the Department to determine compliance, identify unpermitted discharges, and evaluate any potential environmental harm. (*See id.*) Noncompliance with the reporting requirements may give facilities unfair competitive advantage over facilities that maintain strict compliance with the MSGP. (*See id.*)



ECL 71-1929(1) provides that any person “who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder” shall be liable for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day per violation. Department staff’s proposed civil penalty of two thousand six hundred dollars (\$2,600) is consistent with the Department’s Civil Penalty Policy (DEE-1, issued June 20, 1990) as well as applicable provisions of ECL article 71. Furthermore, staff demonstrated the importance of ACRs to the regulatory scheme. Accordingly, I conclude that the penalty of two thousand six hundred dollars (\$2,600) requested by Department staff is supported and appropriate. I also conclude that Department’s request requiring respondent to submit its 2021 ACR is supported and appropriate.

### **Conclusion of Law**

By failing to timely file a complete and accurate annual certification report for calendar year 2021 for the respondent’s SPDES-permitted facility, respondent R&M Gallo Auto LLC violated 6 NYCRR 750-2.1(e), 750-2.5(a)(1) and the MSGP.

### **Recommendation**

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. granting Department staff’s motion for default;
2. holding that respondent R&M Gallo Auto LLC violated 6 NYCRR 750-2.1(e), 750-2.5(a)(1) and the MSGP by failing to timely file a complete and accurate annual certification report for calendar year 2021;
3. directing respondent R&M Gallo Auto LLC to submit a complete and accurate annual certification report for calendar year 2021 for respondent’s facility within thirty (30) days of the service of the Commissioner’s order upon respondent;
4. directing respondent R&M Gallo Auto LLC to pay a civil penalty in the amount of two thousand six hundred dollars (\$2,600) within thirty days (30) of the service of the Commissioner’s order upon respondent; and
5. directing such other and further relief as he may deem just and appropriate.

/s/

---

Jennifer M. Ukeritis  
Administrative Law Judge

Dated: September 20, 2023  
Albany, New York

## APPENDIX A

*Matter of R&M Gallo Auto LLC*  
DEC Case No. CO 8-20220711-46  
Motion for Default Judgment

1. Cover Letter, dated July 17, 2023, from Anne Haas, Esq. filing and attaching staff's motion papers.
2. Affidavit of service of Melissa Evans, sworn to July 17, 2023 (default motion papers).
3. Notice of Motion for Default Judgment, dated July 17, 2023.
4. Motion for Default Judgment, dated July 17, 2023, attaching Exhibit A, Affirmation of Anne Haas, sworn to July 17, 2023, which attaches exhibits B through E:

Exhibit B – Cover letter, Notice of Hearing, Complaint, and Statement of Readiness, all dated January 26, 2023, and proposed Order on Consent and Invoice.

Exhibit C – Affidavit of Service of Melissa Evans, sworn to April 17, 2023 (notice of hearing and complaint).

Attachment A: USPS tracking showing delivery on January 30, 2023.

Exhibit D – Department of State, Division of Corporations entity information for R&M Gallo Auto LLC.

Exhibit E – TOGS 1.4.2 Penalty Guidance Inflation Adjustment for 2022.

5. Affidavit of Ryan Waldron, sworn to June 11, 2023, attaching exhibits 1 through 3:

Exhibit 1 – Notice of Intent for GP-0-17-004 for R&M Gallo Auto LLC.

Exhibit 2 – NOV to submit ACR for 2021 dated April 25, 2022.

Exhibit 3 – Letter regarding failure to file ACR for 2021 and Order on Consent dated August 9, 2022.