

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER**

DEC Case No.  
PBS.2-262286.2.2018

-by-

**SAMBER HOLDING CORP.,**

Respondent.

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This administrative enforcement proceeding addresses allegations of the staff of the New York State Department of Environmental Conservation (Department) that respondent Samber Holding Corp. (respondent) violated ECL 17-1009 and 6 NYCRR 613-1.9(c) by failing to renew the registration of its petroleum bulk storage facility on or before July 26, 2010, the date on which the facility's prior registration expired. Respondent's facility is located at 261 Lenox Road, Brooklyn, New York, and includes an underground storage tank with a capacity of 10,000 gallons.

Department staff moves for a default judgment pursuant to 6 NYCRR 622.15. Administrative Law Judge (ALJ) Maria E. Villa of the DEC's Office of Hearings and Mediation Services was assigned to the matter. ALJ Villa prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter, failed to appear at a pre-hearing conference scheduled for January 8, 2018, and failed to appear for the adjudicatory hearing scheduled in the matter on February 7, 2018 (see Default Summary Report at 3 [Finding of Fact No. 7]).

Because respondent failed to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (see Default Summary Report at 4). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. Staff's papers submitted in support of its motion for default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to renew the registration of its petroleum bulk storage facility on or before July 26, 2010, the date on which its registration expired (see Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 [2003]).<sup>1</sup>

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<sup>1</sup> Respondent's ownership of the facility is reflected in the property deed (see Exhibit D) and the Affirmation of Deborah Gorman, dated February 21, 2018 (see Exhibit B, ¶ 8); see also Default Summary Report at 3 [Findings of Fact Nos. 3 and 4]).

The record demonstrates that respondent was required to renew its registration by July 26, 2010, the date its prior registration expired (see ECL 17-1009[2]; 6 NYCRR 613-1.9[c]; Default Summary Report at 3 [Findings of Fact Nos. 4, 5]). Respondent's failure to renew the facility's registration violated ECL 17-1009 and 6 NYCRR 613-1.9(c).

Department staff seeks a civil penalty of ten thousand dollars (\$10,000) (see Motion for Default Judgment, Exhibit A [Complaint, Wherefore Clause, at II]). ECL 71-1929(1) provides for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. As noted, respondent has failed to renew the registration for the facility since July 26, 2010, when the registration expired (see Default Summary Report at 3 [Findings of Fact Nos. 4, 5]). Where, as here, an owner has not registered the facility for more than five years from the expiration date, a civil penalty of ten thousand dollars (\$10,000) is consistent with administrative precedent (see Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011, at 2). I agree with the ALJ that the ten thousand dollars (\$10,000) sought by staff is authorized and appropriate (see Default Summary Report at 4-5).

I also direct that respondent submit to the Department a petroleum bulk storage application for the facility within fifteen (15) days of service of this order upon it, together with all applicable and past due registration fees.

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Samber Holding Corp. waived its right to be heard at the hearing.
- II. Based upon the allegations of the complaint and the proof submitted in support of the motion, respondent Samber Holding Corp. is determined to have violated ECL 17-1009 and 6 NYCRR 613-1.9(c) by failing to renew the registration of its petroleum bulk storage facility located at 261 Lenox Road, Brooklyn, New York on or before July 26, 2010.
- III. Within fifteen (15) days of the service of this order upon respondent Samber Holding Corp., respondent shall submit to the Department of Environmental Conservation a complete petroleum bulk storage application for the facility, plus applicable and past due registration fees.
- IV. Within fifteen (15) days of the service of this order upon respondent Samber Holding Corp., respondent shall pay a civil penalty in the amount of ten thousand dollars (\$10,000) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.

- V. The petroleum bulk storage application, registration fees, and the penalty payment shall be sent to the following address:

Office of General Counsel (Remediation Bureau)  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
Attn: Deborah Gorman, Esq.

- VI. Any questions or other correspondence regarding this order shall also be addressed to Deborah Gorman, Esq.. at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent Samber Holding Corp., and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Basil Seggos  
Commissioner

Dated: March 12, 2018  
Albany, New York

To: Samber Holding Corp.  
Attn: Trio Realty Associates LLC  
429 Mayfair Drive South  
Brooklyn, New York 11234

(Via Certified Mail)

Deborah Gorman, Esq.  
Remediation Bureau  
Office of General Counsel  
New York State Department of  
Environmental Conservation  
625 Broadway, 14th Floor  
Albany, New York 12233-1500

(Via Intra-Agency Mail)

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**DEFAULT SUMMARY  
REPORT**

DEC Case No.  
PBS.2-282286.2.2018

-by-

**SAMBER HOLDING CORP.,**

Respondent.

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Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Samber Holding Corp. (respondent) with a notice of hearing and complaint, dated December 11, 2017, alleging that respondent violated ECL 17-1009 and its implementing regulation, 6 NYCRR 613-1.9(c), when respondent failed to renew the registration of its petroleum bulk storage facility located at 261 Lenox Road, Brooklyn, New York on or before July 26, 2010, the date on which its prior registration expired. The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 17-1009 and 6 NYCRR 613-1.9(c); (2) assessing a civil penalty in the amount of ten thousand dollars (\$10,000); (3) directing respondent to register its petroleum bulk storage facility within fifteen (15) days of the service of the Commissioner's order by remitting the applicable registration fee, including any past registration fees, along with a complete registration application; and (4) granting such other and further relief as the Commissioner shall deem just and appropriate.

Respondent is an active domestic business corporation in the State of New York, and service of the notice of hearing and complaint on respondent was made by serving the New York State Department of State on December 11, 2017 (Exhibit C). Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on December 11, 2017 (*id.*). Respondent failed to file an answer to the complaint. The notice of hearing and accompanying cover letter directed respondent to appear at a pre-hearing conference scheduled for January 8, 2018 and to appear at an adjudicatory hearing scheduled for February 7, 2018 (Exhibits A and B). Respondent failed to appear at the pre-hearing conference and the adjudicatory hearing.

As stated in the notice of hearing, on February 7, 2018, an adjudicatory hearing was convened at 12:43 p.m. by video conference before Administrative Law Judge (ALJ) Michael S. Caruso. The ALJ was located at the Department's central offices, 625 Broadway, Albany, New York, and counsel for staff were located at the Department's Region 2 offices, 1 Hunter's Point

Plaza, 47-40 21<sup>st</sup> Street, Long Island City, New York. Department staff was represented by Deborah Gorman, Esq. of the Remediation Bureau in the Department's Office of General Counsel. No one appeared on behalf of respondent.

Department staff indicated that it was prepared to proceed with the hearing, proffering a staff witness. Noting for the record that respondent had failed to answer the complaint, failed to appear for the pre-hearing conference, and failed to appear for the adjudicatory hearing, Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15, and stated that staff would be submitting motion papers in support of the motion for a default judgment. ALJ Caruso reserved on the oral default motion pending service and filing of the motion papers and any response thereto.

Staff has submitted a Notice of Motion for Default Judgment, a Motion for Default Judgment, and the Affirmation of Deborah Gorman, Esq. (the "Gorman Affirmation"), all dated February 21, 2018, and nine exhibits.<sup>1</sup> The Gorman Affirmation states that

Department Staff had previously served this matter upon Respondent in February of 2016 and was working to settle with the Respondent at the time, however never was able to. Due to continued lack of compliance, the Department re-served the matter which is this matter, and since that re-service the Department has not been contacted by the Respondent, nor did they appear at the pre-hearing or the hearing that were scheduled.

Exhibit B, ¶ 13. Respondent has not responded to staff's motion for default judgment.

#### Applicable Regulatory Provision

613-1.9 Registration.<sup>2</sup>

“(c) *Renewal*. Registration must be renewed every five years from the date of the last valid registration certificate until the department receives written notice and documentation from the facility owner that the facility has been permanently closed in accordance with section 613-2.6(b), 613-3.5(b), or 613-4.5(b) of this Part, or that ownership of the facility has been transferred in accordance with subdivision (d) of this section.”

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<sup>1</sup> A list of the exhibits submitted by staff in support of its motion for default judgment is attached hereto as Appendix A.

<sup>2</sup> Effective October 11, 2015, 6 NYCRR 613-1.9(c) replaced 6 NYCRR 612.2(a)(2), which stated: “(a) *Existing facilities*. . . (2) Registration must be renewed every five years from the date of the last valid registration until the department receives written notice that the facility has been permanently closed or that ownership of the facility has been transferred.” ECL 17-1009(2) requires facility registrations to be “renewed every five years or whenever ownership of a facility is transferred, whichever occurs first.”

### Findings of Fact

The following facts are found based upon the documents submitted with and in support of staff's motion for a default judgment:

1. Respondent Samber Holding Corp. (respondent) is the owner of a petroleum bulk storage facility having a capacity of over 1,100 gallons located at 261 Lenox Road, Brooklyn, New York (facility). Specifically, petroleum storage tank number 001 at the facility has a capacity of 10,000 gallons and is located underground. Exhibits D, E, F, and G.
2. Respondent is an active domestic business corporation in the State of New York. Exhibit H.
3. Department Staff provided a copy of a deed dated January 28, 1992, indicating that Samber Holding Corp. is the owner of 261 Lenox Road, Brooklyn, New York. Exhibit D.
4. On July 26, 2005, the Department issued Petroleum Bulk Storage (PBS) Registration Certificate No. 2-282286 which lists Trio Realty Company under the heading of "owner." The certificate contained an expiration date of July 26, 2010. Exhibit F. The Gorman Affirmation notes that the owner on the PBS Registration Certificate (that is, Trio Realty Company) is not the actual owner, but that the actual owner is respondent Samber Holding Corp., as shown by the deed, and as indicated in Department staff's cover letter and the notice of hearing and complaint. Exhibit B, ¶ 8. The Gorman Affirmation goes on to state that the facility "appears to have been registered by the property management company [Trio Realty Company]." Id.
5. As of February 20, 2018, the Department's PBS registration database indicated that respondent's registration had expired on July 26, 2010 and, as of February 20, 2018, had not been renewed. Exhibit G.
6. As shown by Receipt for Service No. 201712290168 issued by the New York State Department of State, respondent was served personally on December 11, 2017, pursuant to Section 306 of the Business Corporation Law, with a cover letter, notice of hearing and complaint, a statement of readiness, and supporting affirmation, all dated December 11, 2017, alleging that respondent violated ECL 17-1009 and its implementing regulation, 6 NYCRR 613-1.9(c), by failing to renew the registration of its petroleum bulk storage facility located at 261 Lenox Road, Brooklyn, New York on or before July 26, 2010, the date that the prior registration expired. Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on December 11, 2017. Exhibit B, ¶¶ 2-3; Exhibit C, Affidavit of Service of Dale Thiel, sworn to February 21, 2018, ¶¶ 3-4.
7. Respondent failed to file an answer to the complaint, failed to appear at a pre-hearing conference scheduled for January 8, 2018, and failed to appear for the adjudicatory hearing scheduled for February 7, 2018. Exhibit B, ¶¶ 4-6.

## 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. 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." 6 NYCRR 622.8(c); 6 NYCRR 622.15(a) ("A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and a 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 (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to appear or to file a timely answer; and (iii) a proposed order. 6 NYCRR 622.15(b)(1)-(3).

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 "also submit some proof of the facts sufficient to support the claims charged in the complaint." Matter of Greene Technologies Inc., Ruling of the Commissioner, November 10, 2016, at 3; Matter of American Auto Body & Recovery Inc., Ruling of the Commissioner, July 2, 2015, at 3; Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3.

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 and failed to appear at a pre-hearing conference scheduled for January 8, 2018, as directed in the cover letter served with the notice of hearing and complaint, and in the notice of hearing; and (iii) respondent failed to appear for the adjudicatory hearing scheduled for February 7, 2018, as directed in both the cover letter and the notice of hearing. Department staff has submitted a proposed order with its motion papers. Exhibit I. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to 6 NYCRR 622.15. Staff also served respondent with copies of the motion for default judgment and supporting papers (February 21, 2018 letter from Deborah Gorman, Esq. to Chief ALJ James McClymonds, enclosing motion papers and copying respondent; February 21, 2018 Affirmation of Deborah Gorman).

Department staff's submissions in support of the motion for a default judgment provide proof of the facts sufficient to support staff's claim that respondent failed to renew the registration of its petroleum bulk storage facility located at 261 Lenox Road, Brooklyn, New York on or before July 26, 2010, the date that the prior registration expired, in violation of ECL 17-1009. Respondent has also been in violation of 6 NYCRR 613-1.9(c) since the effective date of Part 613, October 11, 2015.



Department staff seeks a civil penalty of ten thousand dollars (\$10,000). ECL 71-1929(1) provides for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. In proceedings concerning violations of PBS registration requirements for this type of facility in the New York City area, calculation of an appropriate penalty turns in part on the duration of the violations. See e.g. Matter of 540 Jackson Realty Corp., Order of the Commissioner, May 18, 2016, at 2; see also Matter of 12 Martense Associates LLC, Order of the Commissioner, December 19, 2011 (12 Martense Associates), at 2. Department staff has generally requested a penalty of five thousand dollars (\$5,000) for violations extending up to two years, seven thousand five hundred dollars (\$7,500) for violations extending from two to five years, and ten thousand dollars (\$10,000) for violations exceeding five years in duration. See 12 Martense Associates at 2.

The record in this matter reflects that, as of the date of the service and filing of the notice of hearing and complaint in this matter, respondent's failure to renew its registration exceeded five years. I therefore recommend that the Commissioner impose a civil penalty in the amount of ten thousand dollars (\$10,000), as requested by Department staff.

#### Recommendations

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

1. Granting Department staff's motion for default, holding respondent Samber Holding Corp. in default pursuant to the provisions of 6 NYCRR 622.15;
2. Holding that respondent Samber Holding Corp. violated ECL 17-1009 and 6 NYCRR 613-1.9(c), by failing to renew the registration of its petroleum bulk storage facility located at 261 Lenox Road, Brooklyn, New York on or before July 26, 2010, the date that the prior registration expired;
3. Directing respondent Samber Holding Corp. to submit to the Department, within fifteen (15) days of service of the Commissioner's order, a complete registration application for the facility, together with applicable registration fees;
4. Directing respondent Samber Holding Corp. to pay a civil penalty in the amount of ten thousand dollars (\$10,000) within fifteen (15) days of service of the Commissioner's order; and
5. Directing such other and further relief as the Commissioner may deem just and appropriate.

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/s/  
Maria E. Villa  
Administrative Law Judge

Dated: March 6, 2018  
Albany, New York

**APPENDIX A**

*Matter of Samber Holding Corp.*

DEC Case No. PBS.2-282286.2.2018

Exhibits to Staff Motion for Default Judgment dated February 21, 2018

<b>Exhibit</b>	<b>Description</b>
A	Cover Letter from Deborah Gorman, Esq. to respondent, with Notice of Hearing, Complaint, Statement of Readiness, and Affirmation of Deborah Gorman, all dated December 11, 2017
B	February 21, 2018 Affirmation of Deborah Gorman in Support of Motion for Default Judgment
C	Affidavit of Service of Dale Thiel, sworn to February 21, 2018 with New York State Department of State Receipt for Service dated December 11, 2017
D	New York City Department of Finance ACRIS search, with January 28, 1992 deed to respondent
E	PBS Application (marked received July 20, 2005)
F	Petroleum Bulk Storage Certificate No. 2-282286, issued July 26, 2005; expiration date July 26, 2010
G	PBS Program Facility Information Report, printed February 20, 2018
H	NYS Department of State Entity Information
I	Proposed Order