

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

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In the Matter of Alleged Violations of  
Article 19 of the New York State  
Environmental Conservation Law ("ECL"),  
Part 201 of Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
("NYCRR") and Permit Number  
2-6206-00095/00001

**ORDER<sup>1</sup>**

DEC Case No.:  
C02-20020430-59

- by -

**VILLAGE VIEW HOUSING CORPORATION,**

Respondent.

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Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Village View Housing Corporation by service of a notice of hearing and amended complaint dated May 16, 2005.

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"), respondent was served by certified mail with a copy of the notice of hearing and amended complaint on May 19, 2005, at 175 East 4<sup>th</sup> Street, New York, New York.

The notice of hearing and amended complaint alleged violations of the Environmental Conservation Law ("ECL") and 6 NYCRR parts 201 and 202 at respondent's facility located at 60 First Avenue, New York, New York. Specifically, the amended complaint alleged that respondent:

1. Failed to timely submit an emission statement for the period from January 1, 2001, through December 31, 2001, in violation of ECL article 19, 6 NYCRR 202-2.4, and condition 28.2 of the facility's Title V permit number 2-6206-00095/00001;

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<sup>1</sup> By memorandum dated January 24, 2007, Acting Executive Deputy Commissioner Carl Johnson delegated decision making authority in this matter to Assistant Commissioner Louis A. Alexander.

2. Installed new emission units (boilers) at the facility without obtaining a Title V permit or authorization from the Department, in violation of 6 NYCRR 201-6.1; and

3. Operated air contamination sources at its facility without a permit, from at least July 29, 2003 through June 28, 2004, in violation of 6 NYCRR 201-6.1.

Pursuant to 6 NYCRR 622.4(a), respondent's time to serve an answer to the amended complaint expired on June 10, 2005, and has not been extended by Department staff. Respondent failed to file a timely answer or otherwise appear. Respondent also failed to appear at the pre-hearing conference held on June 21, 2005. Accordingly, respondent is in default and has waived the right to a hearing.

Department staff filed a motion for default judgment, dated August 19, 2005, with the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride, who prepared the attached summary report. Following the preparation of ALJ McBride's summary report, the matter was adjourned, at Department staff's request, in order to accommodate negotiations between Department staff and respondent. Department staff recently requested that this matter be placed back on the active calendar. 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 proposed civil penalty to address the violations is appropriate. With respect to these violations, I would note the following from Department staff's motion papers:

- A. Respondent submitted an emission report for the facility on or about January 30, 2003; and
- B. Respondent submitted an air state facility ("ASF") permit application to the Department in April 2004 seeking a modification to its Title V permit number 6206-00095/00001. On June 28, 2004, the respondent was issued ASF number 2-6206-00095/00004 which restricted the facility's air emissions below major source thresholds and capped the facility out of Title V permit requirements.

Notwithstanding the foregoing, respondent was in violation of the provisions of ECL article 19, 6 NYCRR 202-2.4, 6

NYCRR 201-6.1, and condition 28.2 of its Title V permit number 2-6206-00095/00001 for the time periods alleged in the amended complaint. Thus, the penalty imposed is justified by the circumstances of the case.

**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. Respondent is adjudged to be in default and to have waived the right to a hearing in this enforcement proceeding. Accordingly, the allegations against respondent, as contained in the amended complaint, are deemed to have been admitted by respondent.

III. Respondent is determined to have committed the violations of ECL article 19, 6 NYCRR 202-2.4, 6 NYCRR 201-6.1, and condition 28.2 of its Title V permit number 2-6206-00095/00001, as alleged in the amended complaint.

IV. Respondent Village View Housing Corporation is hereby assessed a civil penalty in the amount of twenty-five thousand dollars (\$25,000). The civil penalty shall be due and payable within thirty (30) days after the service of this order upon 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:

Michelle A. Crew, Esq.  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5500

V. All communications from respondent to the Department concerning this order shall be made to: Michelle A. Crew, Esq., New York State Department of Environmental Conservation, 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233-5500.

VI. The provisions, terms and conditions of this order shall bind respondent Village View Housing Corporation, and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By: \_\_\_\_\_  
Louis A. Alexander  
Assistant Commissioner

Dated: January 25, 2007  
Albany, New York

TO: (by certified mail)  
Village View Housing Corporation  
175 East 4<sup>th</sup> Street  
New York, New York 10009

(by regular mail)  
Michelle A. Crew, Esq.  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5500

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

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In the Matter of the Alleged Violations of  
Article 19 of the Environmental Conservation Law of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR")  
Part 201, by

Default  
Summary Report

VILLAGE VIEW HOUSING CORPORATION,

DEC Case No.  
CO2-20020430-59

Respondent.

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Proceedings

By notice of motion dated August 19, 2005, staff of the Department of Environmental Conservation (DEC or Department) sought a judgment by default against respondent concerning alleged violations of Article 19 of the Environmental Conservation Law ("ECL"). It is alleged by DEC that respondent violated Article 19 of the ECL with its operation of a Title V facility. In support of its motion, DEC submitted an affirmation of Associate Attorney Michelle A. Crew dated August 19, 2005; affidavit of Robert Waterfall, DEC Environmental Engineer 3 dated August 17, 2005 and affidavit of Thomas Gentile, DEC Research Scientist dated August 15, 2005 as well as a proposed order and proof of service of the notice of hearing and amended complaint on the respondent, by certified mail, return receipt on May 19, 2005.

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 10, 2005. Further, DEC Staff submitted proof that said notice of hearing and amended complaint directed respondent to appear for a pre-hearing conference on June 21, 2005. The affirmation of attorney Crew indicates that respondent failed to appear at said conference and did not obtain, nor request an adjournment of the conference.

DEFAULT PROCEDURES:

6 NYCRR 622.15, "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 May 19, 2005 Staff served a notice of hearing and amended complaint on respondent Village View Housing Corporation. The time to answer or otherwise move expired on June 10, 2005. No answer has been served to date.
2. The notice for hearing and complaint served on May 19, 2005 directed respondent to appear for a pre-hearing conference on June 21, 2005. No appearance was made by respondent at said conference.
3. Respondent has failed to comply with the air requirements set forth in 6 NYCRR Part 201, ECL Article 19 and DEC Permit Number 2-6206-00095/00001 for its Title V facility located at 60 1<sup>st</sup> Avenue, New York, N.Y.
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: December 14, 2005  
Albany, New York

/s/

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Molly T. McBride  
Administrative Law Judge

To: (by regular mail)  
Michelle A. Crew, Esq.  
NYSDEC  
625 Broadway  
Albany, NY 12233-5500

(by certified mail)  
Village View Housing Corporation  
175 East 4<sup>th</sup> Street  
New York, NY 10009