

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

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

**ORDER**

VISTA No.  
R620040316-17

- by -

**HARRY R. WRIGHT,**

Respondent.

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Staff of the New York State Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondent Harry R. Wright by service of a motion for an order without hearing pursuant to section 622.12 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). Respondent did not oppose the motion or otherwise answer. Although respondent is in default, staff seeks a determination on the merits of its motion for order without hearing.

In Department staff's motion, which serves as the complaint in this matter, staff allege that respondent owns a petroleum bulk storage facility located at 86 South Main Street, Dolgeville, New York, the registration for which expired December 2003. Staff charge that respondent violated article 17 of the Environmental Conservation Law ("ECL") and 6 NYCRR 612.2(a)(2) by failing to renew the registration for his petroleum bulk storage facility.

This matter was assigned to Administrative Law Judge ("ALJ") Helene G. Goldberger. The attached ruling by ALJ Goldberger is adopted as my decision in this matter, subject to the comments herein.

Department staff's submissions establish its entitlement to judgment as a matter of law on the violation alleged. As stated in the attached ruling, because respondent has failed to respond to staff's motion, respondent has failed to raise any triable issues of fact concerning his liability for the violations alleged.

ECL 71-1929 provides for a maximum penalty of \$37,500 per day for each violation of titles 1 through 11 inclusive and title 19 of ECL article 17 and the implementing regulations. Staff requests a penalty of two thousand dollars based upon the Department's Petroleum Bulk Storage Inspection Enforcement Policy (DEE-22), respondent's failure to reply to the Department's reminder that the registration had lapsed and to the motion, the length of time that the facility has gone unregistered, and the circumstance that an administrative enforcement proceeding had to be commenced. The ALJ concurred with staff's recommendation. The regulatory scheme that directs owners of bulk storage facilities to register petroleum bulk storage facilities is a necessary component of the State's efforts to ensure that petroleum does not pollute the waters of the State. Accordingly, respondent's violations are serious and I find that staff's requested penalty of \$2,000 is appropriate.

**NOW, THEREFORE,** having considered this matter, it is **ORDERED** that:

I. Department staff's motion for order without hearing is granted.

II. Respondent Harry R. Wright is determined to have violated 6 NYCRR 612.2(a)(2) for failing to renew the registration for his petroleum bulk storage facility located at 86 South Main Street, Dolgeville, New York 13329.

III. Respondent is assessed a civil penalty in the amount of two thousand dollars (\$2,000) which is to be paid to the Department within thirty days of the date of service of this order upon respondent. Payment shall be made in the form of cashier's check, certified check or money order payable to the "Department of Environmental Conservation." Payment shall be mailed to the Department at the following address: Randall C. Young, Esq., Assistant Regional Attorney, New York State Department of Environmental Conservation, Region 6, 317 Washington Street, Watertown, New York 13601-3787.

IV. Within thirty days of the date of service of this order upon respondent, respondent must either (1) register the facility with the Department pursuant to 6 NYCRR 612.2(a) and pay the \$500 registration fee as required by ECL 17-1009(2), or (2) permanently close all the petroleum bulk storage tanks located at Wright's Mobil Service in accordance with 6 NYCRR 613.9(b).

V. Respondent shall grant access to the facility for Department staff to determine his compliance with the ECL, the

regulations, and this order.

VI. All communications from respondent to the Department concerning this order shall be made to Randall C. Young, Esq., Assistant Regional Attorney, New York State Department of Environmental Conservation, Region 6, 317 Washington Street, Watertown, New York 13601-3787.

VII. The provisions, terms, and conditions of this order bind respondent, and his successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Denise M. Sheehan  
Commissioner

Dated: April 4, 2006  
Albany, New York

TO: Mr. Harry R. Wright (via Certified Mail)  
30 West Timmerman Street  
Dolgeville, New York 13329

Randall C. Young, Esq. (via Regular Mail)  
Assistant Regional Attorney  
NYSDEC - Region 6  
317 Washington Street  
Watertown, New York 13601-3787

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Article 17 of the Environmental Conservation Law and Section 612.2(a) of Title 6 of the New York Compilation of Codes, Rules and Regulations

Rulings on  
Staff's Motion  
for Order  
Without Hearing

DEC File No:  
R620040316-17

-by-

HARRY R. WRIGHT  
Dolgeville (V)  
Herkimer (Co.),

Respondent.

-----X  
Summary of Ruling

Administrative Law Judge (ALJ) Helene G. Goldberger of the New York State Department of Environmental Conservation's (DEC or Department) Office of Hearings and Mediation Services (OHMS) recommends to the Acting Commissioner that the Department staff's motion for an order without hearing be granted and the relief requested by staff be ordered.

Proceedings

The Department staff commenced this proceeding against respondent Harry R. Wright by service of the notice of motion for an order without hearing and supporting papers on July 13, 2005 by certified mail. Staff alleges that the respondent has failed to renew its registration for its petroleum bulk storage facility located at 86 South Main Street, Dolgeville, New York in violation of Article 17 of the Environmental Conservation Law (ECL) and § 612.2(a)(2) of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR). Staff requests that a penalty of \$2000 be assessed against the respondent and that he be directed to register this facility within thirty days from the issuance of the Acting Commissioner's order.

The return receipt for the staff's motion indicates that the respondent received staff's papers on July 19, 2005. Pursuant to 6 NYCRR § 622.12(c), respondent's answer to the motion was due twenty days after receipt - by August 8, 2005. As of the date of this ruling, the respondent has failed to answer the staff's motion and the date for the response is long overdue.

Staff's recitation of the uncontested facts of this matter indicates that its motion should be granted.

#### FINDINGS OF FACTS

On November 3, 1988, Harry R. Wright registered with the Department a petroleum bulk storage facility known as Wright's Mobil Service, 86 South Main Street, Dolgeville, Herkimer County, New York 13329. See, Exhibit A annexed to the affidavit of DEC Environmental Engineer I Donald I. Johnson. On or about January 4, 1998, Mr. Wright renewed this registration. See, Exhibit B to Johnson Aff. This registration expired on December 6, 2003 and the respondent has failed to renew it. See, Exhibits C and D annexed to Johnson Aff. On or about January 7, 2004, Mr. Johnson wrote to the respondent reminding him of the expired registration. See, Exhibit D to Johnson Aff.

The respondent has not taken any steps to transfer or close the facility pursuant to the requirements of Parts 612 and 613. The facility has a total of three active tanks with a capacity of 13,000 gallons.

#### DISCUSSION

Pursuant to 6 NYCRR § 622.12(a), staff has supported its motion for an order without hearing with the factual affidavit of Donald I. Johnson - the Department's staff member responsible for the administration of the Region 6 Petroleum Bulk Storage program since July 1985. In addition, annexed to Mr. Johnson's affidavit are copies of the respondent's prior registration forms, the facility information report, and Mr. Johnson's letter of January 7, 2004 to the respondent reminding him of the expired registration.

Mr. Wright has failed to submit any response to the staff's motion. Thus, there can be no doubt that summary judgment in favor of staff is appropriate as the respondent "failed to establish the existence of any material issue of fact which would require a hearing." Edgar v. Jorling, 225 AD2d 770 (2d Dep't 1996); 6 NYCRR § 622.12(c).

Staff has met its burden in proving that respondent, who owns and operates the facility, is in violation of ECL § 17-1009 and 6 NYCRR § 612.2(a)(2). ECL § 71-1929 provides for a maximum penalty of \$37,500 per violation per day and injunctive relief. Staff has noted that the Division of Environmental Enforcement's Petroleum Bulk Storage Inspection Enforcement Policy suggests a penalty range of \$100 - \$1000 for registration

violations. Because of the respondent's failure to answer the staff's reminder and motion as well as the length of time the facility has gone unregistered, staff recommends a penalty of \$2,000.

The civil penalty policy of the Department provides a number of factors to guide the imposition of penalties including the gravity of the violation, the cooperation of the respondent, the respondent's compliance history and the economic benefit gained by non-compliance. The failure to register tanks is a serious violation as it undermines the State's administration of these facilities which are potential hazards if they are not maintained. While there is no evidence that the respondent benefitted economically from his failure to register the tanks other than to save the registration fee of several hundred dollars, the lack of cooperation and response call for a substantial penalty. Accordingly, I find staff's request for a \$2,000 penalty appropriate.

#### CONCLUSION

I recommend that the staff's motion for order without hearing be granted and that the respondent be required to pay a penalty of \$2,000 and that he also be required to register the facility or permanently close all the tanks in accordance with 6 NYCRR § 613.9(b) within thirty days of the Acting Commissioner's order.

Dated: Albany, New York  
September 6, 2005

\_\_\_\_\_/s/\_\_\_\_\_  
Helene G. Goldberger  
Administrative Law Judge