

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: VAYL, MICHAEL
NOTICE OF VIOLATION OC-SR-16-6**

AAD NO. 17-001/SRE

FINAL ORDER OF DEFAULT

This matter was scheduled for Prehearing Conference on July 19, 2018. Respondent, Michael Vayl, failed to appear or otherwise advise of the reason for his nonappearance. The Respondent had previously failed to appear at a Prehearing Conference on March 22, 2018 and a Conditional Default was issued on March 28, 2018. On April 4, 2018 Respondent filed a response advising why he had failed to attend. On April 16, 2018 an Order was issued holding the Conditional Default in abeyance subject to Respondent continuing to attend when scheduled. On October 2, 2018 DEM filed a Motion for Entry of Final Judgement. For the reasons set forth below, the Motion for Final Order of Default is **GRANTED**.

FINDINGS OF FACT

1. On February 5, 2018 an Order was issued scheduling the above referenced matter down for Prehearing Conference on March 22, 2018 at 11:30 a.m.
2. On March 22, 2018 the Respondent failed to appear or otherwise advise of the reason he nonappearance.
3. On March 28, 2018 a Conditional Default was issued giving Respondent seven (7) days within which to file a written statement why a Final Judgement/Dismissal should not be entered.
4. On April 4, 2018 Respondent filed a written statement reflecting illness in the family as reason for his nonappearance.

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5. On April 16, 2018 an Order was issued scheduling the matter for Prehearing Conference on May 17, 2018 and holding the Conditional Default in abeyance subject to Respondent's continued attendance when scheduled.
6. On July 19, 2018 an Order was issued setting the matter down for Prehearing Conference on September 27, 2018. The Order also indicated that the Conditional Default would be "held in abeyance subject to Respondent's continued attendance when scheduled."
7. On September 27, 2018 the Respondent failed to appear at the scheduled Prehearing Conference or advise of the reason for his nonappearance.
8. On October 2, 2018 OC&I filed a Motion for Entry of Final Judgement.
9. As of October 22, 2018 Respondent has not filed an Objection to OC&I's Motion for Entry of Final Judgement.
10. The Respondent is in violation of the terms of that certain Prehearing Order issued June 8, 2017.
11. Respondent is in default.

ANALYSIS

An order dismissing a case on the grounds of default for failure to comply with court orders is within the sound discretion of the trial justice or hearing officer. Mumford v. Lewis, 681 A.2d 914 (R.I.1996); Fourcier v. Forcier, 558 A.2d 212, 1214 (R.I.1989) (citing Gray v. Stillman, White Co., 522 A.2d 737, 741 (R.I.1987)). As stated in Mumford, a party is entitled to relief if there is a "persistent failure" to comply with court orders that causes "inordinate delay, expense, and frustration for all concerned." Mumford at 691 A.2d at 916. Absent a showing of "excusable neglect...or otherwise good cause" courts will generally conclude a

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judicial officer was within his sound discretion in issuing the default judgement. Pirhonen v. Greene, 641 A.2d 1325, 1326 (R.I. 1994).

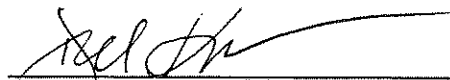
CONCLUSIONS OF LAW

Based on the findings of fact, legal authority, and reasoning set forth above, the undersigned concludes the Respondent is in default and his appeal should be dismissed. The Notice of Violation issued by DEM on April 5, 2017 is a final agency action against Respondent, Michael Vayl, and effective immediately upon the execution of this order.

ORDERED

1. Respondent, Michael Vayl, is in Default and is deemed to have waived his right to an adjudicatory hearing.
2. Respondent's Appeal is **DISMISSED**.

Entered as an Administrative Order this 2nd June day of October, 2018.



David Kerins
Chief Hearing Officer
Administrative Adjudication Division
One Capitol Hill, 2nd floor
Providence, RI 02908
(401) 574-8600

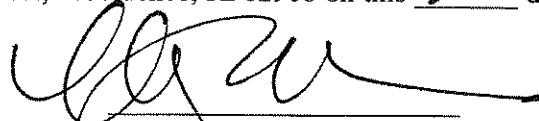
CERTIFICATION

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I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail to: Michael Vayl, 168 Beach Avenue, Jamestown, RI 02835; via interoffice mail to Christina Hoefsmit, Esquire, DEM Office of Legal Services and David Chopy, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 22 day of October 2018.



Mary Dalton