

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

RULING

DEC Case No.
R2-20140224-154

- by -

HILLARY FARMER, JR.,

Respondent.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (John K. Urda, Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- Hillary Farmer, Jr., pro se

Proceedings

By notice of motion for order without hearing in lieu of complaint dated June 21, 2016, staff of the New York State Department of Environmental Conservation (DEC or Department) commenced this enforcement proceeding against respondent Hillary Farmer, Jr. (respondent) for alleged violations of ECL article 17, former 6 NYCRR parts 612, 613 and 614 and current 6 NYCRR 613. On June 21, 2016, Department staff served its notice of motion and supporting statements and exhibits on respondent by certified mail. Respondent received the motion papers on June 23, 2016.

Respondent submitted an answer in opposition to staff's motion dated June 24, 2016. By letter dated August 12, 2016, Chief Administrative Law Judge James McClymonds advised the parties that the matter had been assigned to me.

By letter dated September 15, 2016, I directed staff to provide a copy of the current deed to the premises known as 584 Gates Avenue, Brooklyn, New York and to provide respondent a copy of staff's response. Department staff's September 16, 2016 response provided a copy of the current deed. In addition, Department staff moved for leave to amend staff's pleadings to add the owner of the facility, Throop and Gates Inc. as a respondent. Mr. Farmer was copied on staff's response and motion. Mr. Farmer responded by submitting an unrelated notice of compliance in lieu of appearance in a matter captioned "The City of New York Commissioner of the Department of Environmental Protection, Petitioner, against Throop & Gates, Inc., Respondent." In that matter, respondent Throop & Gates, Inc. objected to petitioner's application to amend and stated the application should be denied in all respects.

DISCUSSION

Under the Department's Uniform Enforcement Hearing Procedures (6 NYCRR part 622 [Part 622]), a party may amend its pleading once without permission at any time before the period for responding expires (see 6 NYCRR 622.5[a]). Thereafter, consistent with the CPLR, a party may amend its pleading at any time prior to the final decision of the Commissioner by permission of the Administrative Law Judge (ALJ) or the Commissioner, and absent prejudice to the ability of any other party to respond (see 6 NYCRR 622.5[b]).

Pursuant to the CPLR, a party may amend its pleading, including for the addition of parties, at any time by leave of court or by stipulation of all parties (see CPLR 3025[b]; CPLR 1003). Leave to amend shall be freely given upon such terms as may be just (see id.).

Except where otherwise prescribed by law or order of the court, an answer or reply to an amended pleading is required if an answer or reply is required to the pleading being amended (see CPLR 3025[d]). Service of such an answer or reply shall be made within twenty days after service of the amended pleading to which it responds (see id.). A motion for order without hearing in lieu of complaint is a pleading that may be amended. (See Matter of Fordham Concrete Corp., Ruling, March 4, 2014, at 6.)

On this motion, Department staff states that if the motion is granted, respondents will have an opportunity to respond to the amended notice of motion for order without hearing in lieu of complaint and supporting documents as provided by statute.

Respondent argues, through the unrelated document described above, that staff's motion for leave to amend is moot and should be denied. Respondent does not argue there is any prejudice to respondent if the motion is granted, nor does there appear to be any prejudice to respondent. Respondents will have the opportunity to respond to the amended notice of motion for order without hearing in lieu of complaint and supporting documents and fully participate in their defense. Accordingly, Department staff's motion to amend the notice of motion for order without hearing in lieu of complaint and supporting documents should be granted.

The amended notice of motion for order without hearing in lieu of complaint and supporting documents should be served upon Hillary Farmer, Jr. pursuant 6 NYCRR 622.6(a) and served upon Throop and Gates Inc. pursuant to 6 NYCRR 622.12(a) and 622.3(a)(3).

RULING

Department staff's motion for leave to amend the notice of motion for order without hearing in lieu of complaint and supporting documents in the above captioned proceeding is granted.

Department staff shall serve the amended notice of motion for order without hearing in lieu of complaint and supporting documents upon respondent Hillary Farmer, Jr. pursuant to 6 NYCRR 622.6(a) and upon respondent Throop and Gates Inc. pursuant to 6 NYCRR 622.12(a) and 622.3(a)(3). Respondents shall have twenty (20) days after receipt of the amended notice of motion for order without hearing in lieu of complaint and supporting documents to file a response to the motion, unless such time to answer is extended by Department staff or by a ruling of the ALJ.

/s/

Michael S. Caruso
Administrative Law Judge

Dated: October 12, 2016
 Albany, New York