

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

In the Matter of the Alleged Violations
of Article 15 of the Environmental
Conservation Law (ECL) and Part 673 of
Title 6 of the Official Compilation of
Codes, Rules and Regulations of the
State of New York (6 NYCRR),

**RULING ON MOTION TO
DISCONTINUE**

DEC Case No.
CO3-20070201-2

- by -

September 22, 2011

**VILLAGE OF FLORIDA, TOWN OF
CHESTER, and COUNTY OF ORANGE,**

Respondents.

Appearances of Counsel:

-- Steven C. Russo, Deputy Commissioner and General
Counsel (Robyn M. Adair of counsel), for staff of the
Department of Environmental Conservation

-- Alyse D. Terhune, Town Attorney, for respondent Town
of Warwick

-- Bernard I. Kunert, Village Attorney, for respondent
Village of Florida (no submissions)

-- J. Scott Bonacic, Town Attorney, for respondent Town
of Chester (no submissions)

-- David L. Darwin, County Attorney (Joseph F. Mahoney of
counsel), for respondent County of Orange (no submissions)

PROCEEDINGS

In this administrative enforcement proceeding, staff
of the Department of Environmental Conservation (Department)
alleges that several respondents are failing to operate and
maintain a structure known as the Glenmare Lake Dam (State Dam
ID No. 179-0460) in a safe condition in violation of
Environmental Conservation Law (ECL) § 15-0507. Department

staff also alleges that respondents conducted repairs on the dam without a permit in violation ECL 15-0503(1) and 6 NYCRR 608.9.

By ruling dated September 26, 2007, I granted Department staff's motion to add the Town of Warwick as an additional party (see Ruling on Motion to Amend Pleadings, Sept. 26, 2007). By letter motion dated August 15, 2011, Department staff now seeks to discontinue the matter against respondent Town of Warwick with prejudice. Staff asserts that upon further investigation, they are unable to prove that the Town of Warwick is a part owner of the dam.

By letter dated August 25, 2011, the Town of Warwick supports Department staff's motion and requests that the motion be granted. No other submissions were filed on Department staff's request.

RULING

In support of its request, Department staff references the standards and procedures provided for voluntary discontinuances under CPLR 3217(b). I conclude that staff has satisfied those standards. No party raised any objection to Department staff's request, and no prejudice to any party is apparent. Accordingly, Department staff's motion is granted. The October 18, 2007, amended complaint is dismissed as against respondent Town of Warwick with prejudice.

/s/

James T. McClymonds
Chief Administrative Law Judge

Dated: September 22, 2011
Albany, New York

TO: (Via First Class Mail)

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