

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

In the Matter of the Alleged Violations of the Environmental Conservation Law (ECL) Article 24 and Part 663 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

**Huron Enterprises LLC,
Wafler Farms, Inc., Paul Wafler,
and Susan Wafler,**

Respondents.

**RULING ON
MOTION TO
AMEND THE
AMENDED
NOTICE OF
HEARING AND
AMENDED
COMPLAINT**

DEC File No.
R8-20160503-
40

This ruling grants a motion brought by staff of the Department of Environmental Conservation (Department) to amend its notice of hearing and complaint in this matter for a second time. Respondents are alleged to have illegally clear-cut and filled freshwater wetland NW-3 on property they own or operate in the Town of Huron, Wayne County, New York.

PROCEEDINGS

This is the fourth motion brought in this matter by Department staff. For discussions of the prior proceedings in this matter, please see: (1) the ruling granting Department staff's motion to amend the notice of hearing and complaint dated April 12, 2017; (2) the ruling denying Department staff's first motion for a default judgment dated August 15, 2017; and 3) the ruling denying Department staff's motion for a default judgment dated August 21, 2017.

Following my August 21, 2017 ruling, I attempted to contact the parties to schedule a conference call to discuss the hearing in this matter. On September 7, 2018, Mr. Wafler spoke briefly to my secretary, refusing to participate in any further proceedings. I promptly followed this call with a letter informing the parties of an upcoming conference call during which the possibility of mediating this dispute would be discussed. However, when the call convened on September 14,

2018, Mr. Wafler did not participate and neither did any representative of the other respondents. Subsequent to the call, a notice of hearing was issued that stated that the hearing would begin at 10:00 am on October 25, 2018 at the Department's Region 8 headquarters in Avon, New York.

In a four-page letter motion dated October 12, 2018, Department staff moved to cancel the hearing and requested permission to again amend its pleadings. By letter dated October 22, 2018, I cancelled the hearing. In an email dated November 5, 2018, Department staff provided an affidavit of service stating that its motion had been mailed to respondents on October 12, 2018. When I inquired as to why Department staff had opted to move for a second time to amend its complaint instead of discontinuing this enforcement action and commencing a new one, Department staff's counsel responded that she believed filing this motion was less confusing, given that respondents are *pro se* in this case. As of the date of this ruling, no response has been received from any of respondents.

DISCUSSION

In the motion, four amendments to the amended complaint are sought. First, Department staff seeks to include a second, adjacent parcel to area where the alleged violations occurred. In both the original complaint and the amended complaint Department staff identified the site of the violations as 10748 Slaght Road, in Wolcott, Town of Huron, Wayne County. In its motion, Department staff states it only recently became aware that a portion of the property upon which NW-3 is located and the violations occurred has an address of 10817 Slaght Road. This amendment will not prejudice respondents, Department staff argues, because the respondents have been put on notice of the alleged violations, and therefore, knew that they had occurred on both parcels.

Second, Department staff seeks to include Susan Wafler as a respondent in this proceeding because she and Paul Wafler own 10817 Slaght Road together. This amendment will not prejudice Ms. Wafler, Department staff argues, because she knew or should have known about the clear-cutting and filling on her property.

Third, Department staff seeks to clarify that Paul Wafler is named as a respondent both as the president of Wafler Farms, Inc. and Huron Enterprises, LLC and individually, as the co-

owner of 10817 Slaght Road. This amendment will not prejudice respondents, Department staff argues, because it merely clarifies Mr. Wafler's involvement in the case.

Fourth, Department staff seeks to amend the two causes of action to include allegations of illegal clear-cutting and illegal filling in the adjacent area of NW-3, as well as the wetland itself. This amendment will not prejudice respondents, Department staff argues, because respondents are on notice of the alleged violations and adding adjacent area of NW3 as an area where the violations occurred will not come as a surprise to respondents.

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 at any time by leave of court or by stipulation of all parties (see CPLR 3025[b]). Leave to amend shall be freely given upon such terms as may be just, including the granting of continuances (see id.). As of the date of this ruling, none of respondents have objected to the requested amendment.

In addition to the arguments noted above, Department staff asserts that respondents will not be prejudiced if staff's motion is granted because: (1) any delay in the proceeding will likely be minimal; (2) respondents will incur no additional expense for legal fees because they have chosen not to participate in this proceeding, to date; (3) all respondents will be provided with sufficient time to answer the second amended complaint, if this motion is granted; (4) all respondents will be able to conduct discovery before any hearing is held and will have an opportunity to fully participate in such hearing; and (5) the amendment will be more efficient compared to filing a second enforcement action for the newly discovered violations on 10817 Slaght Road.

As stated above, respondents have filed no submissions opposing Department staff's motion; thus, no prejudice is argued, nor is any prejudice apparent. Respondents will have

the opportunity to answer the second amended notice of hearing and complaint and fully participate in adjudicatory proceedings in their defense. Accordingly, Department staff's motion is granted.

RULING

Department staff's motion for leave to again amend the notice of hearing and complaint in the above captioned proceeding is granted. Department staff shall serve the second amended notice of hearing and complaint upon respondents pursuant to 6 NYCRR 622.3(a)(3). Respondents shall have twenty (20) days after receipt of the second amended notice of hearing and complaint to file an answer, unless such time to answer is extended by Department staff or the undersigned ALJ.

_____/s/_____
P. Nicholas Garlick
Administrative Law Judge

Dated: November 28, 2018
Albany, New York

Exhibit Chart

Matter of Huron Enterprises, LLC,
Wafler Farms, Inc., and
Paul Wafler

Exhibit #	Description
1	Original notice of hearing, prehearing conference, and complaint
2	Certified mailing receipts for original notice of hearing, prehearing conference, and complaint
3	Ruling allowing first amendment of the notice of hearing and complaint
4	First amended notice of hearing and complaint
5	Draft second amended notice of hearing and complaint