

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

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In the Matter of the Alleged Violations of Articles 15, 25, and 34 of the New York State Environmental Conservation Law (“ECL”) and Section 663.4(20) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”),

**RULING ON STAFF  
REQUEST TO SERVE  
INTERROGATORIES**

-by-

**ROBERT I. TOUSSIE; JOGLO REALTIES, INC.;**  
**T.Z. BROTHERS GENERAL CONTRACTORS, INC.;**  
**LELLO G. ZODIACO; and ANTONIO ZODIACO,**  
**personally and as chief executive officer/sole shareholder**  
**of T.Z. Brothers General Contractors, Inc.,**

DEC Case No.  
R2-20130724-348

Respondents.

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This matter involves staff’s allegations that respondents performed certain construction and other activities following Hurricane Sandy in 2012, without required permits and/or outside the scope of the “Hurricane Sandy General Permit,” GP-2-13-002 and GP-2-13-003, issued following the Hurricane, at property in Brooklyn, Kings County. Staff alleges, among other things, that respondents (i) placed different types of fill in a regulated tidal wetland adjacent area, in a Coastal Erosion Hazard Area (“CEHA”), and below the mean high water line in a navigable water of the State; (ii) were involved in constructing a “shoreline erosion structure” in a regulated tidal wetland and below the mean high water line in the Atlantic Ocean, a navigable water of the State, and in a CEHA; (iii) were involved in constructing a concrete wall with associated concrete footing in a regulated tidal wetland adjacent area and in a CEHA; (iv) were involved in constructing a fence in a regulated tidal wetland adjacent area and in a CEHA, and a “cast-iron fence piece” in a regulated tidal wetland and CEHA; and (v) performed activities that were not within the scope of various Notices of Intent submitted by respondents under the Hurricane Sandy General Permit. See generally Amended Complaint dated July 13, 2016, at ¶¶ 77-112.

In addition to denying liability, respondents Robert Toussie and Joglo Realities, Inc. (“Toussie Respondents”) have asserted what they refer to as fifteen (15) affirmative defenses, including asserting that the site is outside the Department’s jurisdiction under ECL articles 15, 25 and 34, and that certain of respondents’ alleged activities are not within the scope of the provisions cited by staff. See generally Answer to Amended Complaint dated August 15, 2016, at ¶¶ 114-154.

By letter dated November 18, 2016 (“Letter Request”), Department staff has requested, pursuant to 6 NYCRR § 622.7(b)(2), permission to propound interrogatories to the Toussie

Respondents. Staff has appended the proposed set of interrogatories to its Letter Request. By letter dated November 23, 2016 (“Toussie Opposition”), the Toussie Respondents oppose Department staff’s request.<sup>1</sup>

Staff’s proposed interrogatories seek certain information with respect to six photographs that respondents produced in discovery, including the dates of the photographs and annotations on the photographs, the identity of the photographer and the person(s) responsible for the annotations, the meaning of the annotations, and person(s) responsible for construction represented in the photographs. See generally Proposed Interrogatories 1-10. Department staff argues that the proposed interrogatories “will shed light on documents Respondents produced ... and eliminate confusion and surprise that might otherwise occur at the hearing.” Letter Request at 1. Staff argues further that obtaining the requested information “will expedite the hearing,” and that “[i]f this information is not made available before the hearing, the hearing will be delayed while Department staff attempt to discern the facts and potentially identify additional necessary witnesses.” Id. at 2.<sup>2</sup>

In response to staff’s request for permission to serve interrogatories, the Toussie Respondents have provided some of the information sought by the interrogatories, to wit, the general timing of the photographs (post-Hurricane Sandy) and the author of the annotations on the photographs (according to respondents’ current counsel, annotations “made by an attorney for” the Toussie Respondents). Toussie Opposition at 1. The Toussie Respondents argue that service of the interrogatories will not expedite the hearing. With respect to the annotations, the Toussie Respondents state that they are “not arguing that the Department is somehow bound by the annotations and nothing in the Amended Complaint places the annotations at issue.” Id. at 2. Finally, the Toussie Respondents point out that staff has produced more than 400 photographs and 26 videos relating to the site.

Interrogatories are allowed in proceedings under 6 NYCRR Part 622 only “with permission of the ALJ upon a finding that they are likely to expedite the proceeding.” 6 NYCRR § 622.7(b)(2). The party seeking such permission has the burden to demonstrate that interrogatories would be in the interest of justice and would expedite the proceeding. See Matter of Town of Southold, Rulings of the Administrative Law Judge, March 17, 1993, at 10.

Upon review of the proposed interrogatories and arguments of counsel, I hold that permitting the interrogatories is not likely to expedite the proceeding, and therefore deny Department staff’s request. Staff has not demonstrated, for example, how if at all the six photographs at issue here are unique or are materially different from the many photographs and videos already in staff’s possession. Nor has staff established how learning prior to the hearing the identity of the photographer(s) or person(s) responsible for construction depicted in the photographs will expedite the proceeding. Moreover, respondents have provided the general

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<sup>1</sup> Respondents T.Z. Brothers General Contractors, Inc., Lello G. Zodiaco and Antonio Zodiaco (“Zodiaco Respondents”) did not file any papers with respect to staff’s request.

<sup>2</sup> Department staff states that it may also seek permission to serve interrogatories on the Zodiaco Respondents, based upon those respondents’ responses to pending discovery demands. See id.

timeframe in which the photographs were taken, have identified the source of the annotations on the photographs, and have represented that respondents do not seek to bind the Department by those annotations.

Staff is not precluded from seeking at hearing other information regarding the photographs, but has not demonstrated that serving interrogatories with respect to the six photographs will expedite the hearing process. Department staff's request to serve interrogatories is therefore denied.

Dated: November 25, 2016  
Albany, NY

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D. Scott Bassinson  
Administrative Law Judge